

No. 10743

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

AARON FERER & SONS, a co-partnership,

Appellant,

vs.

RICHFIELD OIL CORPORATION, a corporation,

Appellee.

VOLUME II.

(Pages 465 to 942 Inclusive)

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division.

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(Testimony of R. D. Montgomery.)

The Court: I don't know that we need to go into those details. Do I understand that this witness is prepared to [306] testify as to what decision was reached by his employer or his department?

Mr. Paradise: Yes.

The Court: Relative to continuing or ceasing operations?

Mr. Paradise: Yes.

The Court: Let him answer that.

Q. By Mr. Paradise: I would like to call your attention, Mr. Montgomery, to the removal of the derricks and tubing and rods from the wells at Casmalia. Do you know when that occurred?

A. It was in the early part of 1940.

Q. Was that work done on your instructions?

A. It was.

Q. To whom did you give those instructions?

A. I gave instructions to the purchasing department, to Mr. Kelly, to seek a suitable contract for the removal of the derricks, tubing and rods, on that part of the property. It had been reported to me by our watchman up there and I had observed that these derricks, having been there for many years, were toppling over and were in a very hazardous shape. And, inasmuch as we would not use the derricks in a future proposed plan of operation, and inasmuch as we felt that those rods and tubing that were in the wells were in a very hazardous or precarious condition, as that is very corrosive oil and water in those wells, and that they might damage the wells, I ordered them all cleaned up at that time. [307]

(Testimony of R. D. Montgomery.)

Q. Did you give any instructions to Mr. Kelly at that time in connection with the casing in the wells?

A. I gave him definite instructions not to have the casing tampered with at all.

Q. Did you give Mr. Kelly any instructions concerning fishing operations on those wells at the time of the removal of the tubing or rods?

A. I instructed him that in this operation, if the contractor found any tubing parted or stuck in the hole, he was not to fish it out as I did not want that casing disturbed.

Q. Will you explain to the court the difference between tubing and casing in an oil well?

A. Casing is run into an oil well to prevent the formation from caving into the cased hole. Tubing is run into an oil well for the purpose of permitting the hydrocarbons to be either pumped or to flow through the tubing.

Q. Is there any difference, Mr. Montgomery, in the manner in which tubing and casing are installed in oil wells?

A. Yes. There are two different ways of drilling oil wells, two common and different ways. One is what they call cable tools, which was the method used in this field. As you drill with cable tools, you carry your casing right along with your tools to prevent the formation from falling in on your tools and damaging them. The other method of drilling is what is called rotary, which we need not go into, I suppose, [308] as it is in common use now. Casing is used then after the rotary drills the hole and you set casing in there to prevent the same thing, that

(Testimony of R. D. Montgomery.)

is, formations from coming into the hole and to exclude the water that is back of these formations from entering into the oil sands.

Q. My question was concerning the difference in the installation in the well between casing and tubing. Are they attached to the ground in any different manner?

A. Oh, yes; a casing, as I attempted to explain, is landed and cemented upon the completion of your drilling, at which time, after cleaning out inside of the casing, you run tubing inside, under a different hookup entirely, for the purpose of producing the oil if it is there.

Q. Is it easier to remove casing from a well than tubing, or the reverse, whichever the case may be?

A. The tubing is far easier to remove.

Q. Is the tubing cemented in the well?

A. Never.

Q. Mr. Montgomery, do you attend any of the executive meetings of Richfield? A. I do.

Q. How regularly are those meetings held?

A. Once a week.

Q. What persons are present at those meetings?

A. The president of the company and its executive heads.

Q. Do you recall any discussion of the matter of [309] the removal of the tubing or rods from the wells at Cas-malia prior to the time when those items of equipment were removed? A. I do.

(Testimony of R. D. Montgomery.)

Q. Did you make any recommendations to the executive meeting at that time?

A. I recommended, because of the precarious state in which these derricks were and the damage that this tubing which had been standing there for a great many years might cause to the wells, that, if we could get an operator to take this out on a satisfactory basis, we should do so because they wouldn't use that type of structure in future operations.

Q. When you say that type of structure, do you mean the tubing and rods?

A. Tubing and rods and derricks and the whole surface setup.

Q. At the occasion of that meeting, did you make any recommendation concerning any future operation of those wells for the production of oil?

A. During the time that we were discussing this tubing?

Q. Yes. A. Yes.

Q. Will you state what recommendation you made at that time?

A. I recommended that neither the tubing, the rods, nor the derricks, would be required in our proposed future type [310] of operation, that is, the particular tubing and rods that were then in the wells, and that the property to my mind presented good opportunities for operation, profitable operation. And with that in mind I was ordered to go ahead and have this stuff removed.

The Court: May I have that answer read?

(Answer read by reporter.)

(Testimony of R. D. Montgomery.)

Q. By Mr. Paradise: At that time did you make any recommendation concerning the abandonment of the wells, Mr. Montgomery? A. No, sir.

Q. Was there any discussion concerning the abandonment of the wells? A. No, sir.

Q. Had you desired to have the wells abandoned or the casing removed from the wells, could it have been done as a part of the same operation, of removing the tubing and rods and derricks? A. Very readily.

Q. Did you state at that meeting the manner in which you proposed to operate the property for future production?

A. This is prior to pulling the tubing, is it?

Q. Yes.

A. Well, I stated that we were working on the problem; that we had some definite ideas in mind and that, inasmuch as our ideas would not use this equipment that we were [311] discussing, it was decided to remove it.

Q. Calling your attention or directing your attention to the fall of 1940, do you recall any conversation at any of the executive meetings that occurred at that time, concerning the sale of salvage equipment at Casmalia?

A. Yes, sir.

Q. Do you recall about when that occurred?

A. It was in the fall of 1940, September or October or about in there.

Q. When did that proposed sale first come to your attention? Was it at that meeting or on another occasion?

(Testimony of R. D. Montgomery.)

A. Mr. Kelly of the purchasing department called me up in about September, 1940, and told me that the refining group was going to sell what they called refining equipment up there, and did we wish to sell our equipment that we would not use in our future operations. And he recommended that it would be a good time to make a combination sale of this stuff. I agreed with him and that was the initial starting of this sale of equipment, of our equipment.

The Court: May I interrupt to ask the reporter to read that answer?

(Answer read by reporter.)

Q. By Mr. Paradise: In your conversation with Mr. Kelly, did either you or he describe the nature of the equipment that was to be sold?

A. Well, we had a general conversation on the type of [312] equipment that the production department would dispose of. And my only thought was not to disturb the oil wells. The rest of the equipment was not of particular interest to production in our proposed plans for future operation.

Mr. Sturzenacker: I move that portion of the answer beginning with "my only thought" be stricken out.

The Court: Yes; that may go out.

Q. By Mr. Paradise: Did you mention to Mr. Kelly at that time anything about the oil wells as a part of that conversation? A. I can't say that I did.

(Testimony of R. D. Montgomery.)

Q. Did this second meeting of the executive committee which you have referred to occur before or after this conversation with Mr. Kelly?

A. That occurred after.

Q. Did you make any recommendations at that time concerning the sale of the proposed salvage?

A. Yes. At these so-called executive meetings the refinery representative was there and he discussed with the management that he proposed to sell this refining equipment and I discussed with the management that I proposed to sell at the same time this surface or production equipment that we would not need in future operations of the property or would not require, making a combination sale of the material there that neither of us would require.

Q. Did you state at that time why you would not require [313] the equipment that you have mentioned?

A. Yes. I told the management that this equipment that I had in mind to dispose of did not fit into our scheme of future operations; that it had laid there for many years and probably had deteriorated beyond a point that it would do us any good and that our proposed operations did not call for an alignment of the pipelines nor did we intend to use the boilers which were scattered all over the place nor did we intend to use these old tanks which were in locations that would not be useful for our proposed operations and, all in all, as far as I was concerned I would just as leave get rid of all of that type of equipment.

(Testimony of R. D. Montgomery.)

Q. Did you mention anything about the pipelines?

A. The gathering lines on the lease?

Q. Yes.

A. Yes; that was part of this sale. They were of very old age and were not lined up to suit our proposed type of operation.

Q. Had you examined the condition of the equipment that was then being sold, that is to say, were you familiar with it?

A. I was familiar with it. I had made trips to the field there.

Q. Was it your opinion that any part of that could have been used in connection with future operations?

A. Well, possibly some of the pipe, by taking it out of [314] the ground or removing it from its then location and testing it and making various tests on the pipe, might have been used again.

Q. I meant in its condition at that time, in its location and condition at that time, Mr. Montgomery.

A. No; it was not adaptable for my plans at all.

Q. Did you describe to the management at that time the nature of your proposed operation and the manner of it?

A. I did.

Q. Will you state what recommendation you made at that time?

Mr. Sturzenacker: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

(Testimony of R. D. Montgomery.)

A. I explained to the management that here was a property that, to the best of my knowledge, had several million barrels of oil in it and it had been shut down in 1925 due to the fact that they couldn't operate it at a profit and that the reason that they couldn't operate it at a profit was they were using old, obsolete pumping equipment and were pumping these wells with steam. They were injecting at times in some of the wells distillate to lift this heavy oil and they were driving it down to this great mass of refining equipment, at which time they distilled this distillate off. And that was also used for the purpose of breaking the viscosity of this oil to get it into a pipeline. It was very heavy oil. All [315] of which increased operating costs at that time and all of which could be improved with today's methods of operation. We would use no steam and we would use gas engines or pumping jacks that would be engined with gas engines. This breaking machinery, in lieu of the so-called refining machinery that they had up there, is a very compact piece of equipment today as compared to the days they used it, all of which was explained to the management not only at that time but many times.

Q. By Mr. Paradise: Did you give any instructions to Mr. Harold Davis concerning the sale of the salvage equipment?

A. I can't recall. I generally had my conversation with Mr. Kelly.

Q. Did you give any instructions, either to Mr. Davis or to Mr. Kelly or to anyone else, in connection with a sale concerning the six large storage tanks on the property?

A. Yes. I wanted those reserved.

(Testimony of R. D. Montgomery.)

Q. To whom did you give those instructions? Do you recall?

A. It was either Mr. Kelly or Mr. Davis. Mr. Davis, as you know, handles some of these matters for Mr. Kelly but I generally talked to Mr. Kelly, but I might have talked to Mr. Davis.

Q. Do you recall whether you stated what the reasons were for the reservation and exclusion of those tanks?

A. These are very large tanks and they happened to be in [316] fairly good physical shape and some of them had some oil in them and we wanted to use these tanks for our storage and production when we resumed operations up there. Otherwise, we would have had to replace them and it seemed foolish to do that.

Q. At the time this contract was made, did Richfield or the production department have in its possession a set of the logs and well histories?

A. At the time of which contract?

Q. The contract with Aaron Ferer & Sons, that is to say, during January of 1941 and prior to that time.

A. Did we have what?

Q. Did you have in your possession copies of the logs and histories of the wells?

A. Oh, yes; we had all of the logs and histories of every well that had ever been drilled there.

Q. Are those the same logs and histories, copies of which were stored on the lease?

A. I believe they were.

(Testimony of R. D. Montgomery.)

Q. Do you still have those in your possession, that is to say, in Richfield's possession?

A. The logs and histories?

Q. Yes. A. Yes; we have.

Q. Was it ever your intention, Mr. Montgomery, at any time during the negotiation of this contract with Aaron [317] Ferer & Sons and up to and including the date of the execution of that contract, on or about January 17, 1941, that the wells be abandoned, any of the oil wells on the property, or that any of the casing be removed from those wells? A. Never.

Q. Did Mr. Kelly ask you for your approval of that contract prior to the execution of it?

A. Yes, sir. I always approve those types of contracts or look them over for approval.

Q. When you say those types of contracts, what types of contracts do you mean?

A. Anything that has to do with the production department.

Q. Would you have approved that contract had there been any provision in the contract for the abandonment of the wells or the removal of any of the casing from the wells? A. No, sir.

Mr. Sturzenacker: Just a minute. I object to that as calling for a conclusion of the witness. It is strictly dealing in the realm of hearsay.

(Testimony of R. D. Montgomery.)

The Court: It seems to me this question is analogous to the one that we had before us earlier in the trial, on which one side has submitted citations and the other side was given the opportunity to do so, in support of a motion to strike. Overruled.

Mr. Krasne: I understand our motion or objection may be [318] deemed made to this entire line of questions and, if before this case is concluded it is determined it is improper to go into this line of questions, this objection will go to all of this line of testimony, without having to make repeated objections?

The Court: In other words, you have the privilege of making your motion with supporting authorities which will cover questions such as the one now being objected to.

Mr. Paradise: Will the reporter read the last question, please?

Mr. Krasne: He answered it already, I believe.

A. Yes.

(Record read by reporter.)

Q. By Mr. Paradise: If it had been your intention, Mr. Montgomery, to provide for and permit the abandonment of the wells and the removal of any of the casing from the wells, would you have approved the contract unless it had stated the particular manner of abandonment? A. No.

Q. Has your department, or have you as manager of your department, instructed the purchasing department with respect to contracts for the abandonment of oil wells?

(Testimony of R. D. Montgomery.)

Mr. Krasne: We object to that on the ground it is incompetent, irrelevant and immaterial. It does not change this particular transaction.

The Court: Will you read the question? [319]

(Question read by reporter.)

The Court: I think that question is open to the objection which is raised.

Q. By Mr. Paradise: With respect to wells which your department desires to have abandoned, Mr. Montgomery, is it important to you as to the manner in which the wells are abandoned? A. Very important.

Q. In what respect?

Mr. Sturzenacker: We object to that as incompetent, irrelevant and immaterial.

The Court: I think I will hear the answer. I am not sure whether it should stay, but it is not clear in my mind just what is involved here in this question. You may answer.

A. May I have that again?

(Question read by reporter.)

The Court: And read the preceding question and answer.

(Record read by reporter.)

A. Well, I have tried to describe what casing is for in a well and it is cemented above the oil sands usually to keep the water from getting into the oil sands. Certainly, if this casing is to be pulled out of a well and the well abandoned and this casing removed, and we have other wells, or, rather, neighbors have other wells in the vicinity

(Testimony of R. D. Montgomery.)

of this well, you certainly want to be very careful that in abandoning this well you are not going to damage the next one. [320] That is one of the fundamental requirements and one of the reasons that we have a State Mining Bureau. They won't permit you to do such a thing without strict observation or precautions.

Q. By Mr. Paradise: In so far as the abandonment of any of the Richfield wells in the Casmalia field is concerned, would you have been satisfied merely to permit a contractor if you wanted him to abandon wells, to conform to the Mining Division's requirements or would you have imposed additional obligations with reference to the abandonment?

Mr. Sturzenacker: I object to that as incompetent, irrelevant and immaterial.

The Court: I think that is rather speculative but I would like to have something here cleared up at least in my own mind. Do I understand that by the removal of casing from a well in connection with the abandonment thereof there is some risk or danger that damage may be done to wells in an adjoining field?

A. Possibly not in an adjoining field, Your Honor, but in the same producing horizons in that same field there could definitely be damage done.

The Court: Perhaps I didn't use the right expression. Damage might result to wells in an adjoining property?

A. Yes; definitely.

The Court: What is that risk or danger? What does it consist of? [321]

(Testimony of R. D. Montgomery.)

A. Largely in the infiltration of these surface waters into producing oil sands, which are very damaging. They drown the sand and they make it no longer profitable to produce for oil. And it is the possibility of that water getting into those sands that one has to be careful of in abandoning operations.

The Court: With reference to the prior objection, of which I expressed some doubt, the objection is overruled.

Mr. Paradise: You may cross examine.

Cross-Examination.

Q. By Mr. Sturzenacker: Mr. Montgomery, the contract which you saw provided that the abandonment and the removal of this property should in accordance with all of the rules and regulations and laws and so forth, did it not?

Mr. Paradise: I object to the question on the ground it is not clear and that it assumes that the contract uses the word "abandonment."

Mr. Sturzenacker: I will withdraw the question.

Q. You know that this contract provides that in wrecking the equipment or in removing the refining and producing equipment sold to Aaron Ferer & Sons under this contract, the contract agreed to remove it in accordance with the various laws and rules and regulations, did it not?

A. That is right. He had to leave that property in good, clean, satisfactory shape. [322]

Q. And you saw that in the contract, didn't you?

A. Yes.

(Testimony of R. D. Montgomery.)

Q. You also saw in the contract that Richfield was selling Aaron Ferer & Sons everything on the property of the producing and refining equipment, didn't you?

A. That may have been in the contract but that is not what I had in mind when my instructions as to what we were going to sell were given.

Q. After reading that contract—or I will ask you this question. How soon after that contract was signed was it before you read that contract or had it given to you for your approval or was it approved by you before it was signed?

A. It was read and approved by me before it was signed, that is, by our people

Q. Did you call anybody's attention to the fact that in your mind you were only selling the surface producing equipment and not selling all of the producing equipment on that property?

A. I had laid down to the man that negotiated the contract or negotiated the sale of this stuff the type of equipment in so far as the production department was concerned and in so far as I was authorized from my management as to the type of equipment that was to be sold. Now, what wording he used in that contract—those little bits of words probably I wouldn't know and you just wouldn't look at it very close. If that answers your question, that is about the way [323] I sized it up.

Mr. Sturzenacker: Will you read the question?

(Question read by reporter.)

A. I will have to hear that again, please.

Mr. Sturzenacker: All right.

(Question re-read by reporter.)

(Testimony of R. D. Montgomery.)

A. I had already called the people's attention that were negotiating this deal to that fact.

Q. So that, if this contract was executed by Mr. Kelly on behalf of Richfield, selling all of the producing and refining equipment on that Casmalia lease, it was in direct contradiction to your instructions?

A. That is right.

Mr. Paradise: I object to the question and move that the answer be stricken, if the court please. I believe that it implies an entirely different construction of the phrase than the witness has in mind and that the question calls for a conclusion with respect to a particular phrase to which the witness' attention has not even been directed.

The Court: It seems to me the question undertakes to argue with the witness what the phraseology means. If you wish to interrogate the witness relative to the use of certain phraseology in the contract, I think you ought to call his specific attention to it; but what its legal effect is I don't think can be made the subject matter of a question. The answer will go out. [324]

Q. By Mr. Sturzenacker: Are you familiar with the tubing that was in these wells at Casmalia prior to the time that Mr. Anderson removed it?

A. How can you be familiar with tubing? I had a record of what the tubing consisted of.

Q. Did you ever see it? A. No, sir.

Q. Do you know what kind of tubing it was?

A. Yes, sir.

(Testimony of R. D. Montgomery.)

Q. What kind was it?

A. Lapweld tubing, a very obsolete oldfashioned type of tubing, according to the records of the Pan American, and that is what we bought from the Pan American.

Q. It is sometimes described as casing, isn't it?

A. Tubing?

Q. This tubing that was in this well.

A. I wouldn't describe it as casing.

Q. I show you a contract, marked Defendant's Exhibit A, between the Richfield Oil Corporation and W. R. Anderson, dated the 12th day of March, 1940, and ask you if you are familiar with this contract?

A. Yes. I authorized that contract.

Q. I will call your attention to page 4 of that contract and to paragraph (d), which apparently is an index or a digest of what was on the property. Calling your attention to "Well No." and "Tubing" and immediately under that, under the first [325] line, "1 4-3/4" lapweld casing, approx. 960' ", was that casing or was that tubing?

A. That could have been casing. Casing could be used as tubing in a well. I have tried to explain the difference between casing and tubing. There is such a piece of equipment in the oil business as 4-3/4 inch lapweld casing and that same descriptive equipment could be used for tubing.

Q. As a matter of fact, most of that tubing in those various wells was lapweld casing, wasn't it?

A. It is so called here, and for its use to lift oil I thought I explained that was tubing. I don't see any difference there.

(Testimony of R. D. Montgomery.)

Q. Is there any difference between that casing which was used as tubing and the casing which was used or the pipe that was used for casing in the well?

A. Any difference?

Q. Yes.

A. Well, I explained that casing in a well is put in there and it is usually cemented in place to hold the formations from coming in, and tubing is inserted inside of the casing to permit the oil to be pumped out.

Q. That is the function for which you use it. Now, was there any difference in the composition of the pipe?

A. Yes; the casing in the well is generally a much heavier, thicker type of pipe than tubing.

Q. Well, was this casing in the well heavier than the [326] tubing?

A. I would have to see the casing specifications. I don't see any specifications on this. It says "4-3/4" lap-weld casing." That is no specification. I can't answer your question.

Q. You say that you pulled out this tubing or this casing that was used as tubing because it was corroding?

A. That is what we thought.

Q. Was the casing corroding, too?

A. We thought it possibly was; yes, maybe not to the extent of the tubing because there is only one surface of the casing exposed to this sulphuric fluid in there.

Q. As a matter of fact, that oil has a high sulphur content and is very corrosive, isn't it?

A. That is right.

(Testimony of R. D. Montgomery.)

Q. As a matter of fact, it is your opinion that that casing is of very little value in the well, is it not, because of this corrosive effect that the oil has upon it?

A. Well, at least in so far as we know and we went into these wells after this tubing was pulled out. Whether that casing is the last word in casing or not, we know it is holding those formations back because we ran some instruments in there and got close proximity to the bottom in most of those wells.

Q. Did you ever examine the tanks that were on these premises? [327] A. I have seen them.

Q. You have never examined them?

A. I haven't tested the thickness of them or looked at the specifications of the tanks.

Q. Do you know whether they were full or were partially filled with oil?

A. I had a pretty fair knowledge of it.

Q. What was that condition?

A. Are you speaking of the large tanks or all of the tanks?

Q. All of them.

A. Some of them had oil in them and some of them had what is called tank bottoms in them.

Q. You heard Mr. McGahan testify this morning that the only oil which was in the tanks was tank bottoms, didn't you? A. I wasn't here then.

Q. Oh, that is right. As to these various gathering lines that went from the various wells to the storage tanks, in what condition were they?

(Testimony of R. D. Montgomery.)

A. I assumed, due to their age, that they were in very poor condition. I didn't see them after they were pulled out and I don't know.

Q. When was the first time that the Richfield Company decided to reopen this field and reproduce oil from this field?

A. Shortly after the acquisition of this property by the [328] old Richfield Company.

Q. And that was when?

A. It was acquired in 1929 and we were thinking of operating it in 1930 but we went into receivership in 1931 and we stood dormant for six or seven years and couldn't do anything.

Q. All of the activity that has taken place in relation to this field, with the exception of the time you were in receivership, has been with the idea in mind of reopening this field, is that right?

A. We have always had that in mind and we have it in mind right now, sir. There is a very great demand and it is becoming increasingly more for this type of oil.

Q. As an actual fact, since the manufacture or the discovery or use of high octane gasoline, this field has become somewhat valuable, is that not right, or oil of this class has become valuable?

A. Since the discovery of what?

Q. The use of high octane gas or aviation gas.

A. I see no connection.

(Testimony of R. D. Montgomery.)

Q. In other words, there is nothing has developed in the oil business in the last few years that has caused Richfield to want to produce its low gravity oil when they didn't produce it before? A. There certainly has.

Q. What is that? [329]

A. There is an increasing, an ever increasing, demand for the type of asphalt and road oil that this field produces. It is quite a paramount issue today to get asphalt to feed defense industries.

Q. What one thing, if any, has Richfield done since they have owned this field, since 1920 or whenever you acquired it, to date—I will withdraw the question. Has anything been done since Richfield has owned this property leading up to the reopening of this field for the production of oil?

A. We have made a constant study of this problem and we have made reports on it and we have brought our management up to the field with the thought of not only opening this field but also adjacent fields we had an interest in up in that part of the country.

Q. Outside of studying and giving reports to your officials, has anything been done in regard to the physical work of reopening these fields or this field?

A. The very things you are talking about. Cleaning up this debris around here I would call a start in the operations of our proposed work.

Q. You are familiar with this contract, are you not, Plaintiff's Exhibit No. 4, the contract between the Richfield Oil Company and Aaron Ferer & Sons?

A. Yes.

(Testimony of R. D. Montgomery.)

Q. And you are familiar with the map that is attached to it? [330] A. Yes, sir.

Q. This contract provides for the removal of a pipeline to a loading platform some distance away, does it not? A. I believe it does.

Q. Was that necessary or in line with your idea of reopening this field for the production of oil?

A. That is one of the things that holds us back, is the fact that heretofore in some measure that oil has gone out by either railroad transportation or truck transportation and the freight rate out of that country is prohibitive. And in opening it up, we had no idea of shipping oil out in that manner. So that the pipeline to the railroad loading rack had no bearing on our future operations.

Q. You are familiar with the clause in the contract, and I am looking for it as I go along, on page 4, where it says, "In addition, buyer shall install a barbed wire fence adequate for the protection of cattle around two large sumps on the north side of the creek"? Was the protection of the sumps from cattle necessary or in line with your idea of opening up the field for the production of oil?

A. We had existing surface leases on that property and we had to protect the cattle from falling into sump holes. That has nothing to do with the operations of the field, I grant you.

Q. As a matter of fact, that surface lease for the running of cattle had been in existence for several years, [331] had it not? A. I believe it has.

(Testimony of R. D. Montgomery.)

Q. As a matter of fact, since the contract with Aaron Ferer & Sons was signed, you have re-leased the property for that same purpose for another five years, haven't you?

A. No, sir. I can correct you if you want me to. We have re-leased the surface rights of the property but not for the purpose of running cattle on it.

Q. What are the surface rights for, then? Is it farming?

A. Farming beans on a year to year basis. Well, I believe it is a five-year term for certain things.

Q. Were you familiar with this map that is attached to the contract before the execution of the contract?

A. Oh, yes.

Q. And you are familiar with those portions that are circled in red as excluded items?

A. I would have to see the map again to refresh my memory. What is the question?

Mr. Sturzenacker: Will you read the question?

(Question read by reporter.)

A. These tanks?

Q. The tanks and other things.

A. Yes; I am familiar with them.

Q. Did you cause that exclusion to be made or those red marks to be made on there?

A. It undoubtedly originated from my first discussions [332] with Mr. Kelly of what we in so far as the production department is concerned wanted and in so far as we were authorized and would sell.

(Testimony of R. D. Montgomery.)

Q. Are there any of the wells circled in red there?

A. Well, this is a surface map. This is not a well map. This is a surface equipment map.

Q. It shows wells on there, does it not?

A. It shows the location of wells but it doesn't show the subsurface of wells. That is not this kind of a map at all.

Q. Are there any red marks around those wells?

Mr. Paradise: The map speaks for itself.

A. The map is here and I see no marks on it.

Q. By Mr. Sturzenacker: Are any of the wells circled in red there?

A. From a first glance, I see no dots on this map that represent the surface locations of wells, certainly.

Q. How many acres are there in this property? Do you know? A. 400.

Q. Let me call your attention to the first paragraph of the contract.

A. Are you through with the map?

Q. I think so. After the description and on page 2, I call your attention to these words, "Seller covenants and agrees to sell to buyer, subject to the exceptions hereinafter [333] provided, all of the equipment and facilities now located on said land above described, together with pipelines running from said land to a point adjacent to the railroad track one-half mile west of said land." Were you familiar with the terms of that contract when you authorized it to be signed?

(Testimony of R. D. Montgomery.)

A. I was familiar with what I authorized Mr. Kelly to negotiate on.

Q. After the Anderson contract had been completed and contemplating the Aaron Ferer & Sons contract to be completed, what producing equipment would remain on the property?

Mr. Paradise: I don't understand the question.

The Court: Will you read it?

(Question read by reporter.)

Mr. Paradise: I submit that the question is not clear, if the court please.

Mr. Sturzenacker: If it is not, I will withdraw it.

The Court: I am wondering if that question does not invite a controversy as to what counsel, on the one hand, would conclude would remain and what the witness might conclude would remain.

Mr. Sturzenacker: I meant physically, Your Honor. I will withdraw that question.

Q. Anderson completed his contract, did he not?

A. That is right.

Q. And, under your intention and instructions to Mr. Kelly as to what would be sold to Aaron Ferer, what then, if [334] anything, would remain on the property to be used in the producing of the wells on the property?

A. A few large tanks and these appurtenances wouldn't be directly used as production equipment but they were useful. We reserved a house up there and we reserved some gas lines going into this house so our watchman might have some gas and maybe a few other little incidents.

(Testimony of R. D. Montgomery.)

Q. Anything else?

A. Well, we certainly had no mind of letting the casing in the ground go, but I don't call that producing equipment.

Q. Is that necessary in a well in order to produce it?

A. Casing in the ground?

Q. Yes. A. Oh, yes.

Q. Speaking of the things that you did exempt, there was an oil house or office on the premises, wasn't there?

A. Yes. We exempted that and a garage, or whatever it was.

Q. Do you know the place where they kept the drillers' log books? A. I found it out afterwards.

Q. That was sold, wasn't it?

A. I don't recall.

Q. Those log books are not in your possession, as a matter of fact, are they?

A. No. But I wouldn't have sold them if I had known [335] they were up there.

Q. Except those which I delivered to your office one day, the majority of them are not in your possession, are they?

A. You understand, when a driller makes a log, he makes a duplicate copy and sends one to his home office and keeps one on the derrick floor. I have explained we have a duplicate copy of the logs you are talking about.

Mr. Sturzenacker: That is all.

(Testimony of R. D. Montgomery.)

The Court: May I interrupt to ask the witness did I understand you to say in answering one of the questions propounded to you on cross examination that the casing in a well, that is to say, the casing which is installed to protect the well from the infiltration of a foreign substance, is not producing equipment?

A. Well, Your Honor, it is a broad term. Some people would consider it producing equipment and some people call it subsurface equipment. It is certainly used in the production of the well and it is used to keep the formations from caving in.

The Court: Is it called any other type of equipment?

A. It is called generally subsurface equipment, Your Honor, that is, the casing is called subsurface equipment.

The Court: Do you mean that in your business a distinction is drawn between the term "producing equipment" and the casing that is installed in a well? [336]

A. Yes; there is that general distinction.

The Court: Is that distinction well recognized?

A. I believe it is. Yes; it is. I could explain in a very few words to you about what that distinction is.

The Court: Yes. What is it?

A. You drill the well and you case it and, if you are successful in obtaining the oil you are looking for, then you install what is called producing equipment which consists of tubing and rods and pumping equipment, tubes and tanks and such as that, in a brief way.

The Court: I am afraid that we will have to take an adjournment at this hour. How much further have you?

(Testimony of R. D. Montgomery.)

Mr. Paradise: I don't think I will take over five minutes, if the court please.

The Court: I wish we could be sure that it will not be over five minutes.

Mr. Sturzenacker: We are through, your Honor.

Mr. Paradise: I think there are only four or five questions, if the court please.

The Court: Very well; we will see. [337]

Redirect Examination.

Q. By Mr. Paradise: You testified on cross-examination, Mr. Montgomery, concerning a surface lease. Do the operations of the surface lessee tend to interfere with or prevent your operating those oil wells for the production of oil?

A. None whatsoever. It is specifically precluded from such interference.

Q. Mr. Sturzenacker asked you if Richfield during the past few years had done anything leading up to the opening of that field for production. Did the Anderson contract have anything to do with that?

A. That was a part of it. That was one step in getting rid of some equipment that we would no longer require for our proposed plans of production.

Q. Was that your purpose in instructing that that contract be made?

A. That was one of our purposes.

Q. At the time you approved the contract with Aaron Ferer & Sons, did you understand that the equipment covered by that contract and that was to be sold was limited to surface equipment?

(Testimony of R. D. Montgomery.)

A. Well, I rather described it as equipment that we no longer would require in our operations. Now, I have just explained to the Judge, or attempted to, production equipment and surface equipment and they are rather inter-allied.

Q. Did you understand that that contract covered any [337a] subsurface equipment at the time you approved it?

A. I did not.

Mr. Paradise: That is all.

Mr. Sturzenacker: No questions.

The Court: That is all. Now, as I understand it, this concludes the introduction of evidence so far as the defendant is concerned?

Mr. Paradise: Yes.

The Court: I think a fair way of handling this matter would be to require the presentation of briefs and, along with the filing of briefs, that a time be fixed within which the plaintiff may outline what additional evidence it would expect to offer upon resuming the trial. In other words, we have in evidence the depositions of Mr. Ferer—I have forgotten his initials.

Mr. Krasne: Morris Ferer.

The Court: Morris Ferer and Mr. Clements.

Mr. Sturzenacker: Yes, your Honor.

The Court: And I think a time should be fixed within which the plaintiff will indicate in outline form the character of additional evidence that the plaintiff will wish to introduce because, if it should develop that the plaintiff does not intend to offer any further evidence, there

(Testimony of R. D. Montgomery.)

would be no occasion to resume the trial. It occurs to me that 30 days ought to be ample time within which the plaintiff can reach that conclusion. [338]

Mr. Krasne: I think so.

Mr. Sturzenacker: May it please the court, may we make this inquiry? Naturally, if the plaintiff is going to proceed with the case in general, in addition to the testimony that will be necessary to refute or meet the affirmative defense of the defendant on the reformation of the contract, in order to sustain a judgment, we, naturally, would have to go into the element of damages.

The Court: That, I think, we agreed the plaintiff might withhold until the question of liability was determined.

Mr. Sturzenacker: Then, with that understanding, 30 days will be plenty of time to outline to the court any additional evidence we wish to present to this court in defense of the question of reformation of the contract.

Mr. Krasne: There would be only one item that we might be in the dark about, that we might not be able to pre-determine as to the nature of our testimony. As we started this phase of the trial, Mr. Paradise indicated to the court that he had some defenses in mind to the plaintiff's case, I gathered, other than interpretation of written contract No. 1 and other than the matter of reformation; and, naturally, we can't guess all of the things he has in mind in outlining the nature of additional testimony that we might have to present.

Mr. Paradise: That is not correct, if the court please. My only statement in connection with the plaintiff's [339] complaint and the defendant's answer was that

(Testimony of R. D. Montgomery.)

that also involves the construction of the contract, and all of the evidence and testimony, both by deposition and before the court, is equally admissible on both issues. The defendant has denied the plaintiff has performed the contract but, under a separate agreement, the defendant has not raised this lack of performance as a part of its defense of this case.

Mr. Krasne: That clarifies that.

The Court: Yes; I gather that the evidence that is now before us is to be considered both on the question of the plaintiff's case in chief, in other words, what the circumstances leading up to and attending the execution of this contract may be which may throw light on what it fairly means, and, secondly, the evidence which has been offered respecting the affirmative relief by way of reformation which the defendant seeks. I think, having in mind that the plaintiff is not to be foreclosed on the matter of proof of damages—in fact, I would be inclined to think that both sides would want to send that out to a referee or a special master because that sounds like it might be interminable—and since we are to consider only the question of liability, which, of course, involves the meaning of the contract and what, if any, reformation shall be allowed, the plaintiff should be able to indicate within the next 30 days what, if any, additional evidence it will wish to offer on the issues that are now before us. And it occurs to me that within that [340] same period briefs could be filed which will indicate the position which the parties take respecting the case on the present record.

(Testimony of R. D. Montgomery.)

Mr. Sturzenacker: I am just wondering about the briefs, your Honor. We have some additional testimony, naturally. And, if we did file briefs and outlined that testimony, we might anticipate what the witnesses might state or might not state at the time of trial. I am just wondering if the briefs couldn't best be withheld until such time as the evidence is in and then have the matter submitted on briefs.

The Court: That additional testimony would have no bearing on the issue of reformation, I take it.

Mr. Sturzenacker: Yes; any outline of evidence that we will present will be on the question of reformation of the contract.

The Court: I may be a bit confused here. I thought that you gentlemen indicated that you were prepared to try at least the issues raised by the affirmative defenses, which involve, of course, the matter of reformation. I didn't understand that you would require more time to present evidence on that issue.

Mr. Krasne: If that had been the case, we would, naturally, proceed now with Mr. Ferer and Mr. Clements and we certainly wouldn't be content to sit back and rely upon those depositions which have been filed and never intended to do so. [341]

The Court: You would want to call them?

Mr. Krasne: Oh, yes.

Mr. Sturzenacker: Those depositions were taken by the defendant, your Honor, and taken from the defendant's standpoint and not from the plaintiff's standpoint.

(Testimony of R. D. Montgomery.)

Mr. Krasne: We are prepared and can continue if the court's calendar permits and if that is the court's desire. Perhaps I misunderstood. I thought we were just to dispose of the particular affidavits and the particular witnesses in view of the turn of the trial.

The Court: In addition to the testimony of Mr. Ferer and Mr. Clements, did you have some other witnesses on the issue of reformation?

Mr. Krasne: I think there might be in the light of some of the testimony that has now developed.

The Court: Let's go forward, then, and at least complete the taking of the evidence on the issue of reformation, having in mind that you are going to be allowed 30 days to determine whether or not you want to offer evidence on the main issue as to what is the fair meaning of this contract.

Mr. Krasne: Whatever your Honor indicates he would like us to do.

The Court: We will take that up in the morning. We will take a recess until 10:00 o'clock in the morning.

(Whereupon an adjournment was taken until 10:00 o'clock a. m. Friday, September 11, 1942.) [342]

Los Angeles, California, Friday, September 11, 1942;
10:30 A. M.

The Court: We will proceed with the case on trial, Ferer & Sons vs. Richfield Oil Corporation.

Mr. Krasne: Mr. Ferer, take the stand.

MORRIS FERER,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Q. By the Clerk: Please state your name.

A. Morris Ferer.

Direct Examination.

Q. By Mr. Krasne: Mr. Ferer, the firm of Aaron Ferer & Sons is a co-partnership, is it not?

A. Yes, sir.

Q. Comprised of whom?

A. Ester Peggy Ferer, Robert Ferer and Morris Ferer.

Q. Ester Peggy Ferer is your wife and Robert Ferer is your son, is that right? A. Yes.

Q. And who is in charge of the operation of the business? A. I am.

Q. What is the nature of the business of Aaron Ferer & Sons?

A. We are in the scrap material business and the usable [343] machinery business.

Q. How long have you been so engaged?

A. Well, our firm was associated with my father. We have been in business over 50 years.

Q. How long have you, yourself, been actively associated in the business? A. Over 25 years.

Q. What was the nature of the employment of Mr. Zeidenfeld? What was his work? What did it consist of?

(Testimony of Morris Ferer.)

A. He was a buyer of scrap material or scrap metals and scrap iron. He contacted mostly small scrap dealers and auto wreckers. He inspected and checked up on material that we would buy at some plants and saw that the material that we purchased was delivered or loaded properly or made arrangements and so forth for that, but, generally, he did buying of smaller lots of material.

Q. Was there some particular basis upon which he was authorized to buy?

A. He bought on the basis of the market price of the general market for all grades of scrap material, a fixed price that changed from time to time. There was each grading and each classification and there were prices for it and he bought on the basis of those prices.

Q. In other words, if there was an established price for sheet iron, he would have authority to go out and buy a lot of sheet iron at so much per ton so long as it was within [344] that established price, is that right?

A. That is correct.

Q. Did he have any authority to negotiate for you on any deals that involved dismantling of materials and transportation?

A. He did not.

Q. Did he have any authority to negotiate for you in connection with any lump sum deals?

A. He had no authority on any lump sum deals that would amount to any type of figure. He might take a small deal that would amount to a few hundred dollars or something like that and consult with me on it but he had no authority to go into any type of large deal, whether it was a lump sum or anything else, without first getting proper authority.

(Testimony of Morris Ferer.)

Q. In this Casmalia deal, aside from the purchase price that was payable to Richfield under the contract, did the dismantling and removal and cleaning up amount to anything very sizable in dollars and cents?

A. Yes; a very large amount of money was involved.

Q. Will you give the court some indication of how much this deal involved over and above the purchase price to Richfield.

Mr. Paradise: I object to that question on the ground that it is not clear as to whether the question is directed to the estimates that were involved during the negotiations of the contract or if the question involves the amounts that [345] were expended after the contract, unless the question is purely preliminary.

Mr. Krasne: It is preliminary. I just wanted to indicate the scope of the deal.

The Court: Will it be claimed by the defendant that this deal did not involve the expenditure of a substantial sum—

Mr. Paradise: No, indeed.

The Court: —to obtain the dismantling and removal of the salvage?

Mr. Paradise: No; it will not, your Honor.

Mr. Krasne: Very well; I will withdraw the question.

Q. Mr. Ferer, when did you first hear that there was to be some equipment sold at Casmalia?

A. When Mr. Clements came to me with the proposition or an idea that this deal was available, which I place as sometime in the latter part of November.

(Testimony of Morris Ferer.)

Q. Had you known Mr. Clements prior to that time?

A. Casually.

Q. When Mr. Clements came to you on the occasion that you refer to, did you have some conversation with him?

A. Well, naturally, we talked or discussed about what he had in mind.

Q. Was anyone else present?

A. I couldn't remember that. I don't think so.

Q. Will you please relate the conversation as nearly as you can remember it? [346]

A. Well, he came to me and said there was a big deal that Richfield had and he thought we could make a pretty nice deal; that he had had some previous dealings with Richfield and that he knew the situation pretty well; that he had just finished a deal with Richfield, and I think it was at Santa Fe Springs, although I am not sure. That was merely in the conversation. And he mentioned to me the type of deal it was and I told him that I was very much interested.

Q. What did he say with respect to the type of deal that it was?

A. Well, he told me a large refinery and a lot of equipment and so forth that Richfield had at Casmalia.

Q. Was anything discussed with respect to the basis upon which you and Mr. Clements would work?

A. Well, he mentioned that he didn't have enough funds to handle a deal of that character; that, if we got the deal, I would finance it and we would split it or he would take a portion of the profits if there were any. That is about the gist of the conversation.

(Testimony of Morris Ferer.)

Q. Did he tell you with whom he had been discussing this matter at Richfield or was there anything said about that?

A. I don't remember. I didn't go into that much detail at the time.

Q. Prior to the date of this conversation with Mr. Clements, had Mr. Zeidenfeld said anything to you about this [347] deal? A. No, sir.

Mr. Paradise: May I inquire of the court if this is subject to the rules of cross-examination, the examination of this witness under the court's order?

The Court: I take it that we have in evidence the deposition of this witness.

Mr. Paradise: Yes.

The Court: And that he is now being called by the plaintiff for such evidence as plaintiff wishes to offer. And, naturally, the witness is subject to cross-examination.

Mr. Paradise: My question was whether the examination of the witness by the plaintiff is being considered cross-examination, in the light of further examination under the deposition, or whether he is being called as an original witness.

Mr. Krasne: Principally, I am probably using the witness more in rebuttal as a result of certain evidence that was introduced as a result of previous witnesses. I will state to the court I am going to try not to cover subject matters that were adequately dealt with in the deposition, although occasionally I may not be able to help it.

(Testimony of Morris Ferer.)

The Court: Whether this evidence be referred to as evidence in chief or evidence by way of rebuttal, the witness is subject to cross-examination by you.

Mr. Paradise: Yes. But that wasn't what I had in mind, [348] if the court please. I was merely going to object, if this examination of the witness were cross-examination of the matters that I covered in my examination at the time of the deposition, to certain things which would be improper cross-examination on the ground that they were not gone into in the deposition. But, if it is my understanding that this is an examination in chief and that cross-examination may be made by me, I will eliminate all objections of that sort.

The Court: I think that is a fair way of stating what the situation is.

Mr. Krasne: Yes; that is quite satisfactory.

The Court: Yes.

Q. By Mr. Krasne: Do you recall Mr. Zeidenfeld ever having spoken to you about this particular deal prior to the time that you made a deal with Richfield?

A. I do not recall him ever speaking to me about this particular deal. There may have been a time that he mentioned Richfield to me because we were doing business with Richfield. We had purchased material from Richfield prior to this deal but at no time do I remember Mr. Zeidenfeld ever speaking to me about this particular deal.

Q. And, if he did say anything to you about the deal, do I understand that you did not understand that he was talking about this particular deal?

A. Yes, sir.

(Testimony of Morris Ferer.)

Mr. Paradise: I object to that on the ground it is [349] leading and suggestive.

The Court: I will let it stand.

A. That is correct.

Q. By Mr. Krasne: If you had known that Mr. Zeidenfeld was talking to Richfield about this deal and that he was bringing it to your attention, would you have made a deal with Mr. Clements to give him part of the profits for bringing you the deal?

Mr. Paradise: I object to that on the ground it is speculative, if the court please, and hypothetical.

The Court: I think it is a matter of argument. The witness has testified, in effect, that the first he heard about the so-called Casmalia deal was when Clements brought the proposition to him and suggested that since he, Clements, couldn't finance it, he wanted the plaintiff to go in the deal with him provided the plaintiff would finance it. From that I think it is a fair inference that that circumstance was the reason why the witness went into the deal and that as far as Zeidenfeld was concerned the witness never heard of the Casmalia deal.

Mr. Krasne: With that statement, I will withdraw the question.

Q. Prior to the time that you made the deal with Richfield, had anyone working for Richfield ever said anything to you about their estimate of quantity of material on the job? [350] A. They did not.

(Testimony of Morris Ferer.)

The Court: May I interrupt to inquire is there any contention that anyone connected with Richfield referred to the quantity that was involved other than what took place in the conversation between McGahan and Zeidenfeld?

Mr. Paradise: No, if the court please, other than the testimony in the affidavit of Mr. McGahan that in his conversation with Mr. Ferer he told him at that time that he, Mr. McGahan, at that time, which I believe was sometime in September or the early part of November, did not have information at that time as to the quantity but that he would have information as to the quantity later and would be willing to furnish it, and that Mr. Ferer never made any further inquiry for that information.

The Court: Then, I think it is clear that the defendant has offered no evidence to the effect that any figures were actually communicated to the plaintiff respecting quantities except such information as is claimed to have passed from McGahan to Zeidenfeld.

Q. By Mr. Krasne: Mr. Ferer, prior to the time that you made your offer to Richfield to purchase the Casmalia equipment, had you heard from Mr. Zeidenfeld or anyone at all that Richfield estimated that their quantity of equipment on this job was 1,500 tons?

A. I did not.

The Court: May I have that question read? [351]

(Question read by reporter.)

Q. By Mr. Krasne: If, prior to the time that you made your offer—I will withdraw that. What quantity of material did you think there was in the job before you made your offer?

(Testimony of Morris Ferer.)

A. I estimated there were approximately 3,000 to 6,000 tons.

Q. If you had estimated that there would be only 1,500 tons of material, would you have made the same offer? A. I would not.

The Court: Mr. Reporter, will you read the answer to the preceding question?

(Answer read by reporter.)

Mr. Krasne: Will you read the witness the last question?

(Record read by reporter.)

Q. How much would you have offered if you had thought the quantity would amount to only 1,500 tons?

Mr. Paradise: I object to that question, if the court please, as wholly immaterial.

The Court: May I suggest that, the witness having told us that he estimated that there was a minimum of 3,000 tons on which his offer was based, I think it is a fair argument to say that, had he estimated the quantity as 1,500 tons, his offer might have been just about half what he submitted. I don't know what more he could tell us.

Q. By Mr. Krasne: Did you ever see any of the pipe [352] equipment as it was being removed by you from the Casmalia job? A. I did.

Q. Please tell the court what the condition of that equipment and material was when it was removed.

A. Well, generally, the largest proportion of the pipe was in good condition. Other equipment, or some of it, was scrap and some of it we cut apart and tore apart and

(Testimony of Morris Ferer.)

saved part of it as usable material and part of it was scrapped. The tanks, or a great proportion of the tanks, were good tanks and were sold as tanks, usable tanks.

Q. What disposition did you make of the pipe that you took up from this job?

A. Well, the largest proportion that was good pipe we sold to various pipe people that use it and resell it for pipe mostly in the oil business.

Q. In your opinion, was the pipe good enough to be used for that purpose? A. It was.

Mr. Paradise: For what purpose?

Mr. Krasne: To be used for resale to people in the oil business.

Q. As pipe? A. As pipe; yes, sir.

Q. To whom did you sell some of the tanks that you referred to? [353]

A. We sold quite a large number of the tanks to the State of California.

Q. As tanks or as scrap?

A. As tanks, which they are going to use for storage purposes.

Q. Was very much of the pipe corroded or ruined and useless as pipe?

A. A very small percentage and that was mostly, if I may state, pipe that was exposed to the outside, because it seems the air, the salt air, that being close to the ocean, or at least that is the explanation that I got, corroded the pipe; but the pipe that was underground was practically all in excellent condition.

(Testimony of Morris Ferer.)

Q. I believe you testified in your deposition that the largest proportion of the pipe was actually underground. Is that correct? A. That is correct.

Q. Did you hear Mr. Montgomery's testimony with respect to the material and equipment at Casmalia?

A. I did.

Q. If the material and equipment had been in the condition as described by him, what market would there have been for the salvage?

A. That would have been considered scrap and it would have had a market for remelting purposes as scrap iron.

Q. As scrap iron? [354] A. Yes, sir.

Q. Are you familiar with the established market price for scrap iron in January, 1941? A. I am.

Q. What was the established market price for scrap iron in January, 1941?

A. Approximately \$12 a ton f.o.b.

Q. What would be the fair and reasonable cost to take that material up at Casmalia per ton?

Mr. Paradise: If the court please, I object to this because it seems to me it tends to the same element of damages which the court has referred to a future time. If we are going into this element of the problem, I will object on the ground of lack of foundation.

Mr. Krasne: I think I should explain, if I may, why I offer this evidence. I think it is separate and apart from the other theories which we have discussed. Richfield, the defendant in this case, at least with respect to the cross-complaint, is seeking equitable relief and it is

(Testimony of Morris Ferer.)

charging that the plaintiff had certain knowledge or suspicion of what was in its mind. I want to establish by this witness, who is qualified and competent as to values of scrap and cost of transportation and cost of taking up the material, that, if the equipment and the material on the Casmalia property was as it has been described by the defendant, and if the quantity of material was as estimated by the defendant, when [355] they received an offer from the plaintiff that was so entirely out of proportion to what they understood the equipment to be, the burden should have been upon them to have inquired if the plaintiff wasn't making a mistake rather than the other way. And it is for that purpose that I offer this evidence.

The Court: The witness has already told us that most of the tanks and most of the pipe were of a character that the same could be used again, the tanks for storage purposes and the pipe for further use in the oil business. Regardless of what the defendant thought was the condition of the scrap or the pipe or whatever the salvage was, I don't think that they can escape being chargeable with knowing as much about the condition of their material at least as could have been ascertained by reasonable inspection. We are not here dealing with what it would have cost to dismantle and remove a lot of scrap. We are concerned at best with what the material was that was involved here. If we are going to go into the subject matter of what it would have cost to have dismantled and removed all of this material, on the assumption that it had been for the most part useless for further purposes and was good only primarily for scrap, I think we will open up a realm of speculation that will really

(Testimony of Morris Ferer.)

lead us nowhere. I think we would at least have to inquire not only along such speculative lines if we got started on this but whether or not the deal actually made, assuming that it [356] was of the character which the witness has described, involved such as the cost of dismantling and removal and resale, and we will be asking then the question of whether or not the deal as it now stands was a profitable deal. Do you think that we may inquire as to whether the deal as it has presently been consummated is or was a profitable deal?

Mr. Krasne: Peculiarly, since the case apparently turns so much upon what was in one's mind, even that question might have a materiality. In other words, if a person makes an estimate and he is established in business and presumably knows his business and he makes an offer, taking into account equipment which he believes is included in the deal, and it could be shown that, if that were the case, his offer would have been an intelligent one, a businesslike one, and he would have earned a profit from it, whereas, if the deal is to be interpreted as the other side contends it should be, it might have a bearing to actually show that, in truth, under their contention a man, who presumably should have some business judgment and sense, was making a losing deal, because, as a matter of fact, that is what the evidence will show; and I think it would be of assistance in interpreting what the parties had in mind at the time they made the offer. I realize it is speculative but intentions are speculative. The whole realm of mental workings of all the people connected with the deal in many respects is speculative but, when you come down now to the application of a business [357] principle and a business problem, I think it might have a bearing.

(Testimony of Morris Ferer.)

The Court: Is it your position and do I understand that you are prepared to prove that the transaction in its present condition was of a character that men in the line of business such as this plaintiff, and having in mind the market conditions prevailing in January, 1941, would not normally be expected to have offered such a price as this plaintiff offered for the material that has actually been delivered to it or which it has been permitted to take?

Mr. Krasne: I will state, further and more specifically, that we offer to prove and will prove that, without the pipe in the wells, the quantity removed actually was only some 1100 tons, and that actually as the deal stands at the present writing, without taking into account the pipe in the wells, the deal stands the plaintiff a loss of several thousand dollars without his having charged himself with any overhead. And to me I think it is a very practical point. A man is either a fool or he must have had in mind the pipe that is in controversy. He just doesn't go into a deal to pay \$22,000 plus all of the collateral costs to come out losing money. And I think we can establish his experience is such that he couldn't have been that foolish.

The Court: What do you say, Mr. Paradise, to the proposition that, in order to show the intention of the plaintiff and what may reasonably be inferred as being the [358] plaintiff's understanding of what the defendant intended, it becomes pertinent to inquire what was the fair market value of the material which the defendant has permitted the plaintiff to remove?

Mr. Paradise: I think the answer to the court's question requires a consideration of several matters. In the first place, the particular question to which the objection

(Testimony of Morris Ferer.)

was raised was the question of both the value and the cost of the removal of the scrap material; and I believe Mr. Krasne arrived at that point by asking the witness if he had heard Mr. Montgomery's testimony and that the assumption was then made that it was Mr. Montgomery's testimony that the equipment was scrap. I want to point out to the court that I believe that is a misinterpretation of Mr. Montgomery's testimony. The testimony of Mr. Montgomery was that it wasn't usable to Richfield Oil Corporation in connection with its producing operations and that some of it he felt was in bad condition. If we eliminate the problem as to whether this was or was not scrap, then I think it is probably material, as the court suggests, that an inquiry be made as to estimates and costs, that is to say, their estimates of costs, which were made prior to the time at which the deal was consummated. If the court will recall the depositions of both Mr. Ferer and Mr. Clements, if we go into the proposition of estimates, I tried to inquire into that very fully at the time of the depositions and received [359] the answers on numerous occasions that they had no recollection whatsoever of their estimates. I merely point out that, if this is a proper subject of inquiry, it is already in evidence before the court of the fact that there were no estimates either of costs or recovery which either witness at the time of the depositions could recollect.

Mr. Krasne: That is not entirely so. It is true that both Mr. Ferer and Mr. Clements testified they had no deal for a breakdown. It was just a deal that you couldn't estimate with precision because so much of the material was underground, but, as to the quantity, the record shows that they both estimated that there were from 3,-

(Testimony of Morris Ferer.)

000 to 6,000 tons. I want to show that, if the deal is as contended for by the defendant, the quantity removed was 1100 tons. It, therefore, must have had in mind something beyond that.

The Court: The ruling is this, that the plaintiff will be permitted to show the fair market value of the material which they succeeded in obtaining from this transaction but not what it would have been had the material been something else.

Mr. Paradise: In the inquiry as to what was the fair market value, if the court please, is that inquiry as to the value of the equipment in place, installed and before dismantling, or does that mean the fair market value after all of the work of dismantling has been performed? I raise that point only for the reason that, if we are going into the [360] second problem, it is a question of costs of labor and costs of transportation and things of that sort.

The Court: Of course, we want to keep out of this particular trial those items which would necessarily go into the trial of an issue of damages.

Mr. Krasne: Oh, yes.

The Court: And I think we must treat this pending matter in the light of what men in the same type of business as the plaintiff would have fairly estimated was the value of this material about to be sold where it was, as, obviously, any prospective bidder would have to make an estimate and could not be expected to determine with arithmetical exactness those figures which later experience brought to light.

(Testimony of Morris Ferer.)

Q. By Mr. Krasne: Your testimony is that your over-all estimate was from 3,000 to 6,000 tons of material in this Casmalia deal, is that correct?

A. That is correct.

Q. Do you recall, roughly, what proportion of that total estimate you thought would be pipe in the oil wells as distinguished from the other pipe and other equipment on the property?

A. Well, we estimated that there would be 50,000 to 100,000 feet of pipe in the wells and 50,000 to 100,000 feet of pipe of that character would weigh approximately 2,000 tons.

Q. Has the work of removing the pipe and material and [361] equipment been pretty generally completed save for the pipe in controversy? A. Yes, sir.

Q. What quantity has been removed?

A. May I have that question again?

(Question read by reporter.)

A. From this Casmalia deal?

Q. Yes; from this Casmalia deal.

A. Approximately 1100 tons total in all.

The Court: I am not sure that I understand the answer. The 1100 tons refers to what? To pipe?

A. Of everything; the 1100 tons consisting of pipe and other miscellaneous items, boilers, rods and various materials that were on the property.

Q. By Mr. Krasne: Then, if I understand you correctly, you have now taken up all of the material that was included in this sale except for the pipe or casing in the wells which is in controversy, is that right?

(Testimony of Morris Ferer.)

A. That is correct with the exception of a few tanks, small tanks that have to be removed and there is some debris and brick and so forth that has to be taken care of, but substantially everything has been taken off of the property.

Q. Taking into account the moneys which you have paid to Richfield and expenses that have been incurred in the taking up of the equipment and transporting it, do you now show a profit or a loss on the materials thus far removed? [362]

Mr. Paradise: I object to that question, if the court please, on the ground that there is no proper foundation laid.

The Court: When you speak of lack of foundation, to what are you referring?

Mr. Paradise: The fact that there is no showing as to how a loss, if any, occurred, what the costs were or what their original estimates of costs were or whether their actual costs were in excess of their estimates of cost. I think, before an inquiry as to the final result as to whether a loss has been sustained is made, we must find out what they contemplated at the time they went into the matter as to the costs.

Mr. Krasne: I think that is a matter for cross-examination.

The Court: Wouldn't it seem essential, in order to render this evidence pertinent, that we have the type of data to which the objection directs our attention? In other words, it is conceivable that a man may lose money on a deal but that of itself would have no evidentiary value in a case of this kind.

(Testimony of Morris Ferer.)

Q. By Mr. Krasne: Mr. Ferer, do you know the gross amount that has been realized—I will withdraw that. Has this 1100 tons of material that has been removed been sold by you? A. Yes, sir.

Q. Do you know of your own knowledge how much you have [363] realized from the sale of that material?

A. Well, I don't know offhand. I would have to refer to my books. I don't quite understand if you have reference to whether I knew the gross amount of what we received for the 1100 tons or not.

Q. That is right.

A. Well, if I made a statement to that effect, it would be a guess and I would have to refer to my books.

Q. And you do have books and records that you can refer to to get that information? A. Yes, sir.

Mr. Krasne: I will abandon that inquiry for the moment, if the court please, and come back to it after the noon recess, if I may.

Q. Did Mr. McGahan ever tell you that the defendant Richfield desired to sell only service equipment?

A. He did not.

Q. Did anyone connected with Richfield ever make that statement to you? A. They did not.

The Court: May I interrupt to inquire is it claimed by defendant that anybody other than McGahan made such a statement?

Mr. Paradise: I don't recall, if the court please. I can review the affidavits, though, and find out.

(Testimony of Morris Ferer.)

The Court: I will let him answer the question. Will you [364] read the question?

(Record read by reporter.)

Q. By Mr. Krasne: Mr. Ferer, do you remember the occasion of a meeting between yourself, Mr. Davis, Mr. Clements, Mr. McGahan and Mr. Paradise, in Mr. Paradise's office? A. I do.

Q. That meeting was when?

A. It was a few days—I don't fix the exact date but a few days after I was at Richfield's office and gave them a check for \$22,000 in payment of this deal.

Q. What conversation, if any, did you have with Mr. Davis before you went into this meeting at Mr. Paradise's office?

A. Well, we had very little conversation; merely that we made a deal, and I brought him the check. He then handed me a piece of paper outlining the nucleus of the deal and he contacted Mr. Paradise, who apparently was busy and couldn't see us at that time and told us to come back, and that we were to go up and draw up the final or formal contract, or whatever you want to call it.

Q. Did you understand, after you had made your offer in writing and had received Richfield's offer in writing and after you had paid Richfield the \$22,000, that there were to be further negotiations in connection with the deal?

A. I did not. I took it for granted that we had [365] already made a deal.

(Testimony of Morris Ferer.)

Mr. Krasne: I should like to state to the court that at one stage during the proceedings, at a time when I think I was talking about something else and my mind was probably not as clear as it should have been, your Honor directed a question to me and asked me if the depositions showed that, after the money had been paid, it was contemplated that there were to be any further negotiations with respect to the contract, the January 17th contract. And I believe I indicated to the court that my recollection was such, that is, that there were to be some further discussions and negotiations leading up to the January 17th contract. In going over the depositions and in interrogating Mr. Ferer, I find that actually I am in error in my conclusion or interpretation to this court and I trust that it won't be prejudicial to our case, that is, to the plaintiff. I think that it is Mr. Ferer's belief and feeling that actually the January 17th contract was to have been merely a formal crystallization of what was pretty well and completely set forth in the offer and acceptance, and, had that not been the case, he would not have parted with his \$22,000, and that he didn't propose to pay the \$22,000 and then start to negotiate a deal. So, if there is any uncertainty in the record, I trust the court will accept my statement to clarify it.

Q. I show you now what purports to be a letter, on the letterhead of Aaron Ferer & Sons, dated December 10, 1940, [366] which has been introduced as Plaintiff's Exhibit No. 2. When I referred to an offer having been made a moment ago, I referred to that document. That was the offer, was it not, that you had submitted to Richfield?

A. That is correct.

(Testimony of Morris Ferer.)

Q. I show you also Plaintiff's Exhibit No. 3, which purports to be a communication on the letterhead of the Richfield Oil Corporation. And, when I referred to Richfield's acceptance a moment ago, I had this document in mind. Was that the acceptance that you had received from Richfield? A. That is correct.

Q. And what has been introduced and marked as Plaintiff's Exhibit No. 1, which I show you, was the memorandum of reply which Mr. Davis gave you when you handed him the \$22,000 on January 8th, is that correct? A. That is correct.

The Court: I don't know why we are going all over this again.

Mr. Krasne: I will say I am leading up to only one point, on which there may be some uncertainty.

The Court: Very well. Then, let's go ahead. But it seemed to me all of this had been admitted by the other side and I didn't know why you were going over it again.

Mr. Krasne: Well, I think even the other point that I had in mind bringing out is pretty well covered, too, and I will cease. If the court please, I would like the privilege [367] of recalling Mr. Ferer after the noon recess with respect to the matters contained in his books. Except for that, I am through with Mr. Ferer.

The Court: We will take that up, then, when it is offered. Do I understand the cross-examination may now proceed?

Mr. Krasne: Yes, your Honor.

The Court: May I suggest, in view of the time that has already been occupied, that we try to conclude with this witness before we adjourn for the noon recess?

(Testimony of Morris Ferer.)

Mr. Paradise: I was going to limit the cross-examination very considerably, if the court please, in view of all the testimony that is already in the deposition.

The Court: Then I believe that you are also calling Mr. Clements?

Mr. Krasne: Yes, your Honor; and that will be very brief.

The Court: It will be brief?

Mr. Krasne: Yes, your Honor.

Cross-Examination.

Q. By Mr. Paradise: Did I understand you to say that you have never discussed with Mr. Zeidenfeld any part of this transaction, Mr. Ferer?

A. Not prior to the making of the deal.

Q. That was what I meant, prior to the date of the contract. Do you recall Mr. Zeidenfeld telling you that he had understood or that he had learned from Mr. McGahan that [368] Richfield's estimate of the quantity of the salvage was 1,500 tons? A. I do not.

Q. Did Mr. Zeidenfeld ever tell you that it would take about \$20,000, in the neighborhood of \$20,000, to make an acceptable bid? A. He did not.

Q. Did he ever mention a sum in connection with this? A. No, sir.

Q. Would you say that you had never discussed the matter with Mr. Zeidenfeld?

A. I don't remember ever discussing this transaction with Mr. Zeidenfeld. As I say, I have discussed Richfield matters with Mr. Zeidenfeld.

(Testimony of Morris Ferer.)

Q. Did Mr. Zeidenfeld make any written reports to you? A. No, sir.

Q. Were all of his reports oral?

A. All of his reports were very oral.

Q. Are you acquainted or familiar with the operations of an oil field? A. I am not.

Q. Are you acquainted with the equipment that is used in an oil field for operating purposes?

A. I am not.

Q. Do you have any knowledge of that whatsoever?

A. No, sir. [369]

Q. Then, you have no knowledge as to whether or not the equipment, the pipelines and the tanks that were taken up, were in any condition for use by Richfield Oil Corporation in the operation of that field, is that correct?

A. I don't quite understand your question, Mr. Paradise. May I have it again?

(Question read by reporter.)

A. I wouldn't know anything about Richfield; no, sir.

Q. Well, would you know about any other oil company?

A. I would say that, if you are referring to the pipe, I have experience as far as pipe is concerned and that any other oil company could easily use that pipe.

Q. For what function or purpose?

A. The function that pipe would be used for.

Q. As a pipeline, do you mean, or as a culvert?

(Testimony of Morris Ferer.)

A. I am not referring to culverts. They are an entirely different matter. I am referring to use as a pipe for the original intention it was manufactured for.

Q. Are you talking about the condition of the pipe as it was in the ground, with steam lines in it and all and other debris in the pipe, which had been there for 15 years, or are you talking about the pipe after it had been taken out, cleaned, burned and reconditioned?

A. I am talking about the pipe after it had been taken out, which was in good condition to be re-used as it was taken out of the ground. [370]

Q. Do you mean after it was taken out and cleaned and put back into condition?

A. No. Naturally, pipe with oil in it couldn't be used for drinking water but the pipe was in no way affected by the oil that was in it when it was taken out of the ground or the fact that there were lines inside of the larged sized pipe. In fact, it seems that the oil preserved the pipe because a great deal of it was just as good, in my opinion, as the day it came from the factory.

Q. That is, in your opinion as a salvage dealer rather than in your opinion as an oil operator, is that correct?

A. I am not qualified as an oil operator.

Q. I believe you testified, Mr. Ferer, that the tonnage that you estimated of the casing that was contained in the wells was 2,000 tons. Is it not correct that you formerly testified that the estimate of tonnage was somewhere in the neighborhood of between 1,000 and 1,500 tons?

(Testimony of Morris Ferer.)

Mr. Krasne: Show it to him in the deposition if that is what you are talking about.

A. I estimated in the deposition that there would be 50,000 to 100,000 feet and of that type of casing 50,000 to 100,000 feet would be a minimum of approximately 2,000 tons.

The Court: Let's see if I understand your answer, that, if the casing totalled some 50,000 feet, that casing would weigh approximately 2,000 tons? Is that what you mean?

A. Yes; approximately 8 pounds to the foot, your Honor. [371]

Q. By Mr. Paradise: Is that the 50,000 feet, Mr. Ferer?

A. I am referring to the minimum amount; yes, sir.

Q. The 50,000 feet would be what quantity?

A. Approximately 2,000 tons.

Q. And you formerly mentioned between 50,000 and 100,000 feet?

A. Yes, because, as they explained to me, there was probably 100,000 feet of casing in those wells but whether all of it would be recoverable is the question. In other words, in taking it out, and I am not speaking now as an expert but only as to what I have been told, you can't recover 100% of the casing that is in the well.

Q. And the 100,000 feet would amount to what in tonnage? Would that be 4,000 tons?

A. Approximately 4,000 tons.

(Testimony of Morris Ferer.)

Mr. Paradise: I am sorry to take the court's time but Mr. Krasne asked me to produce something out of the deposition.

Mr. Krasne: It is not necessary now because the witness has answered the question.

Mr. Paradise: Well, I can't find it now anyway.

The Court: May I interrupt to ask the witness to see if I understand an answer that he gave a moment or two ago? I believe you used some such expression as this, "From what they told me, I estimated that there would be 50,000 to 100,000 feet of pipe in the wells." When you used the word "they", were you referring to anyone connected with Richfield? [372]

A. No, sir. I was referring to Mr. Clements when we went up there to look over the property before we made our offer.

Q. By Mr. Paradise: Mr. Ferer, is it not correct that your costs of doing this work were far in excess of what you had originally anticipated?

A. Well, again, I would have to refer to our books. I think our costs ran a little bit higher.

Q. I am talking now about the matter of the removal of the boilers and pipelines and tanks and the refinery buildings.

A. I understand what you are referring to.

Q. Did the condition of the weather have anything to do with that increase in cost?

(Testimony of Morris Ferer.)

A. Well, we ran into considerable rainy weather and the structure of the ground there was so that it made it very hard to accomplish much during this rainy weather and we had to maintain a certain crew and that probably ran our costs a little higher.

Q. Did the condition of the weather and the fact that it was the rainy season have anything to do with the cost of hauling out the salvage equipment which you were purchasing?

A. Most of the salvage equipment was shipped by railroad and we didn't have such a great deal to do with it.

Q. How did you get it out to the railroad?

A. We hauled it by truck to the railroad which was [373] probably half a mile from the place.

Q. Did the rainy condition and the wet condition of the ground have anything to do with the difficulties in hauling?

A. Only on the lease. The roadway to the lease was, of course, a hard surfaced road.

Q. What would you say was the amount of increase in cost because of that condition?

A. I just told you that it would be purely a guess but I can ascertain that when I consult my books.

Q. Do you recall a conversation with Mr. H. H. Kelly in his office in the Richfield Building, I think it was in June of 1941, when you were asserting the right to abandon these wells and take the casing from them?

(Testimony of Morris Ferer.)

A. Well, I remember a visit to Mr. Kelly's office. I don't know what conversation you are referring to.

Q. Do you recall whether or not you stated at that time that, because of the wet condition of the weather that occurred after you entered into this contract and after you had your crew of men up there, it became almost impossible for you to operate and that your men were idle for a great period of time and that that greatly increased your costs and that that had resulted in not only a loss of profits but also a cash out-of-pocket loss on the transaction?

A. I don't remember the conversation you are repeating for me. I remember stating we had a very substantial loss on this deal and we discussed the wells at the time, and I [374] told them at that conversation or at that meeting that we definitely anticipated getting the pipe out of those wells and that we would have a terrific loss if we didn't get what we expected to buy. Whether I told him the very words that you are talking about, I can't repeat. We did encounter additional expense due to rainy weather and I mentioned that, but whether it was that conversation I can't tell you. I made no secret about it. I mentioned it and gladly admit it. I can't give you any figures exactly of how much our cost was on account of the rainy weather. We keep no set of books of that kind.

Q. But that greatly contributed to the amount of the loss, did it not?

A. Well, I think most of it was the fact that we didn't get everything we expected to buy that contributed to it.

(Testimony of Morris Ferer.)

Q. I think you are arguing with me rather than answering the questions.

A. I am sorry. I don't mean to argue. I apologize.

Q. To what extent did the unforeseen weather conditions contribute to the amount of your loss? Can you answer that? I mean can you give any percentage of the over-all costs that was caused by that?

A. No; I have never tried to break it down or given it that kind of thought. I know that the deal, after we found out that we were in this type of difficulty, looked very sour and that is about all. We didn't anticipate the [375] type of weather we ran into. There is no question about that.

Q. You referred in answer to Mr. Krasne's questions to the date on which you gave a check to Richfield Oil Corporation in the amount of \$22,000, and I believe you stated that was on January 8th, is that correct?

A. Well, it was, I think, January 8th; yes.

Q. And that was also the date on which Mr. Davis gave you that memorandum? A. That is correct.

Q. And I believe you also stated—or I will withdraw that. Did you testify that that was the deal as of that date?

A. Well, I testified that, when I received your letter of January 2nd accepting our offer that that was a deal, that is all there was to it and I went up to Casmalia and made a trip and made plans and everything else. And then, on January 8th, I went to the bank and had a check certified for \$22,000 and took it up there and paid

(Testimony of Morris Ferer.)

the money, and everything was in complete detail as to the basis of the deal. I certainly did figure that I had a deal and that there wasn't anything else involved excepting routine detail.

Q. Subsequent to that date, you said that there was a meeting in my office, did you?

A. Subsequent to what date?

Q. To the date on which you delivered the check for [376] \$22,000.

A. No, sir; it was subsequent to the date of this formal contract, as you call it. There was no meeting in your office until a few days after I had given the check to Mr. Davis.

Q. That is what I meant. The meeting in my office occurred after the check had been given, is that right?

A. Yes; within a day or two or a short period. I don't remember the exact date.

Q. Was there not considerable negotiation and discussion of various items of the contract at that meeting which occurred, as you say, a few days subsequent to the giving of the check?

A. Well, no. There were discussions but the discussions were mainly as to when we were going to get started. There was one discussion there on the material which you had sold previous to our contract. I think that was the longest point of discussion there, was the fact that we didn't know where to cut off the pipe on this various equipment, stills and so forth, that you had sold, and it was very ambiguous as to the way that was stated. And

(Testimony of Morris Ferer.)

the fact was that we wanted to settle that question of whether they were going to cut the pipe off that connected these stills a mile from there or right up to the point of the stills and that was settled. I think Mr. Davis called someone. I don't remember the details. But that was one of the things we negotiated [377] about and we settled at that time that we were to cut them right off flush with the piece of equipment you had sold because the way you had it there at that time these people might have claimed a mile of pipe or the full length of the pipe, and we had to settle that at that time.

Q. Had any contract been drawn at that time?

A. Well, I don't know what you mean by a contract. No contract such as this final contract had been drawn.

Q. Is it not true that at that meeting the only documents that were before those who were discussing the transaction were this memorandum of January 8th, which is Plaintiff's Exhibit No. 1, and Aaron Ferer's offer of December 10th, which is Plaintiff's Exhibit No. 2, and Richfield's letter of January 2nd, which is Plaintiff's Exhibit No. 3; that those were the only documents that were present as a part of the discussion and that no contract had yet been drawn?

A. These were the only documents we had but I don't even know that those were before us at the time. I don't even remember at this discussion that there were any documents. They may have been there. I can't say definitely yes or no.

(Testimony of Morris Ferer.)

Q. Do you recall that any contract had been prepared, even a preliminary contract, along the lines of the final contract that was dated January 17th?

A. I don't remember whether a preliminary contract had [378] been made or had not been made. There was a discussion and then the final contract that you are talking about was made. There may have been a preliminary contract because I mentioned to you, if you include all metal and all lumber, that will cover everything. We bought everything and I don't remember whether that was a contract that I had changed at that time or whether it was in the discussion and you had that in this final contract.

Q. It was on that occasion of that conversation, which was after the check had been given, that you asked for the inclusion of the words "metal and lumber," is that correct?

A. That is correct.

Q. Was it also on the occasion of that conversation that there was discussed the exclusion of the gas line or lines running from the superintendent's house to one or more of the wells?

A. Well, I think there was some discussion. As I stated before, I paid no attention to it because a gas line for a superintendent's house didn't mean very much to me as far as value was concerned, with hundreds of thousands of feet of pipe up there. A gas line to a superintendent's house just didn't mean anything and I didn't give it any thought. I think there was some discussion, though.

(Testimony of Morris Ferer.)

Q. That hadn't been discussed in any prior meetings between you and Mr. Davis or Mr. McGahan, had it?

A. No; nothing like that was discussed. [379]

Q. Had there been any discussion prior to that date of the matter of your insurance coverage as a contractor in performing this work?

A. I think I brought that up myself or we discussed that. That is a very common thing in a deal of this kind, that we show the company we do business with that we have proper insurance and that they would be absolved from any liability that might occur on account of our being at fault. So I think that the insurance was discussed. I don't remember whether it was discussed before or at that time but we did say we would send certificates from our insurance company to you, which we did. I don't remember whether we had those or not there. I think I made arrangements the minute I got your letter of January 2nd with our insurance company to start making the proper and necessary arrangements for the men that were away on this job but I don't remember whether it was right after January 2nd or after we paid you the money. But I do know, immediately the minute we got your acceptance, we had a deal.

Q. There was nothing in the letter of January 2nd that mentioned anything about insurance, was there?

A. No.

Q. Had that been discussed prior to the meeting in my office?

A. No. But it is a natural thing. We wouldn't lay ourselves open to any damages on the part of our own people [380] suing us for work that has to be done.

(Testimony of Morris Ferer.)

Q. My question is had anyone employed by Richfield Oil Corporation informed you prior to that date what Richfield's requirements were as to what insurance you would be required to carry as a contractor as part of this transaction.

A. Before what date, Mr. Paradise?

Q. Before the date of the conversation in my office to which we have been referring.

A. I can't answer that. I can't honestly say whether it was before when we were at Mr. Davis' office or not but the proper insurance was taken care of. There was no fixed time that I can remember.

Q. Do you recall whether there was any discussion prior to the discussion in my office of the matter of mechanics' liens resulting from your work or the protection by Aaron Ferer & Sons of the property against mechanics' liens?

A. I don't know what you mean, Mr. Paradise.

Q. I will make it clear. The contract contains a provision concerning the protection by you of the property against mechanics' liens. When was that matter discussed between you and any Richfield representative?

A. I don't think it was ever discussed. I think it was just put in the contract and I took it for granted as a natural form of your method of doing business.

Q. Do you have any recollection of whether that matter [381] was or was not expressly discussed?

A. I would say that it was not discussed because I have never had occasion for anything like that.

(Testimony of Morris Ferer.)

Q. Do you recall any discussion between yourself or Mr. Clements in your presence and any employees or representatives of Richfield concerning compliance with the regulations of the fire warden or the Fish and Game Commission in performing your work under this contract?

A. May I have that question again, please?

(Question read by reporter.)

A. There was some discussion. I don't remember where or when or how. But, naturally, taking it for granted that we would comply with all of the requirements of the law, it just passed on in a normal manner. I don't remember that there was any discussion or that there would necessarily be any discussion.

Q. You have no recollection of that now, is that correct?

A. I have no recollection of any extraordinary discussion. It might have been mentioned or said that, "You are to comply with the laws", and, naturally, we took that for granted.

Q. Wasn't it true, Mr. Ferer, that the memorandum that Mr. Davis gave you on January 8th was merely a nucleus or the basis on which the contract would be drawn and was merely a preliminary memorandum for the purpose of discussion? [382]

A. No; it was a memorandum, in my opinion, and what I thought when I handed him my money was that it was the basis or the fundamentals of this deal and that the other things were just formal things, such as insurance and such as the laws you were talking about and various other things that are just natural. You are not

(Testimony of Morris Ferer.)

going to let us go off completely wild, naturally, nor would we let you; but these were the basis and the salient points in the entire deal.

Q. But there were matters for future negotiation, were there not, subsequent to that date?

A. When you say matters of negotiation, I can only answer you nothing of importance with reference to this deal. If you are talking about a pipeline, a small pipeline, Mr. Paradise, the value of that pipeline would not be \$5 from my standpoint. So I certainly wouldn't give it any outstanding thought.

Mr. Paradise: I move that the last two sentences of the witness be stricken as a voluntary statement and not responsive to the question.

The Court: Let it go out.

Q. By Mr. Paradise: Mr. Ferer, do you recall that your deposition was taken in this case on February 6 and 7? A. Yes, sir.

Q. I would like to read to you two or three questions that were asked of you on that date and also your answers.

The Court: Let the witness have the original, Mr. Clerk. [383]

Q. By Mr. Paradise: Referring to page 246, starting in line 3, the question is, "In your conversation with Mr. Davis, that I think you said occurred on January 8th, did Mr. Davis tell you that it would be necessary to make a written contract on this transaction?"

(Testimony of Morris Ferer.)

“A.—That seemed to be his procedure. He didn’t say it was necessary. He just merely took it for granted that you were going to write up a contract.”

Then, referring again to page 246, line 24, “Q—I hand you Plaintiff’s Exhibit 1, which I understood you to say was given to you by Mr. Davis on January 8th, is that correct? “A.—Yes, sir.

“Q.—Did that memorandum purport to set forth all of the terms of your contract with Richfield Oil Corporation?

“A.—No. That merely was the nucleus or the basis that the contract would be drawn on.

“Q.—It was merely a preliminary memorandum for the purpose of discussion, was it not?

“A.—I imagine so.

“Q.—When the contract was finally prepared and signed, were there additional exclusions from the exclusions stated on that memorandum?

“A.—Yes; there were some additional exclusions made that came up in the discussion.”

Mr. Ferer, do you recall on the occasion of your deposition that those questions were asked of you and that those [384] were the answers which you gave?

A. Yes, sir; those are correct.

The Court: Where did you quit reading?

Mr. Paradise: I believe it was page 247, line 13. I believe that is all, if the court please.

(Testimony of Morris Ferer.)

Redirect Examination.

Q. By Mr. Krasne: There were a number of things that Richfield asked you for, after you thought the deal had been set, that you let them have, isn't that so?

A. Yes, sir.

Q. What was there that arose besides this gas line that you have referred to?

A. Well, there was a power line that they included and then later on found out that it didn't belong to them and they asked us to omit the power line; that it wasn't originally intended in the contract; and we agreed not to take the power line.

Mr. Paradise: I move that the answer be stricken and I believe that the conversation should be asked for rather than the conclusion of the witness.

The Court: The answer may go out. It is really a conclusion of the witness.

Q. By Mr. Krasne: From the questions that Mr. Paradise read to you from the deposition when he talked about further negotiations with respect to exclusions, what was your under- [385] standing? What did you think he meant when he asked you that question?

A. May I have that question again?

(Question read by reporter.)

A. At the time of the deposition?

Q. Yes.

A. I thought he meant the excluded items that they kept out and with reference to these small detailed matters that go along with a deal of this character.

(Testimony of Morris Ferer.)

Q. In other words, you mean, after a deal is set, there is sometimes a little give and take? Is that what you meant?

A. That is what happened in this deal.

Q. You didn't mean by the answers that you gave in response to Mr. Paradise's questions in the deposition that, after you had paid your money on January 8th, you were then to sit down and negotiate the terms of this deal with Richfield, is that right?

Mr. Paradise: I believe that is argumentative and leading and suggestive.

The Court: Of course, it is leading but I will let it stand.

A. I certainly did not.

Mr. Krasne: That is all.

Mr. Paradise: That is all.

The Court: I suggest that we take a recess of some 10 or 15 minutes and then take the testimony of Mr. Clements. [386]

Mr. Krasne: We will probably have two additional witnesses whose testimony won't take more than 5 minutes as far as we are concerned.

The Court: Are they in the courtroom?

Mr. Krasne: No. One of them has been called but I haven't had an opportunity to discuss with him what I expect to examine him about.

The Court: Let's take this recess and then we will take the testimony of Mr. Clements.

(Short recess.) [387]

THOMAS HUBBARD CLEMENTS,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Q. By the Clerk: Please state your name.

A. Thomas Hubbard Clements.

Direct Examination.

Mr. Sturzenacker: If your Honor please, as far as this witness is concerned, his deposition is on file and, although I wasn't present at the taking of the deposition, I have read it and I will try to steer clear of repetition.

Q. Mr. Clements, what is you business or occupation?

A. I run the Refinery Equipment Company.

Q. How long have you been engaged in that business?

A. This present company I have run for eight years.

Q. And prior to that time what were you doing?

A. Engineering work of one type and another.

Q. And what kind of engineering?

A. Both chemical, mechanical and gas engineering.

Q. Does that work require your services to be used in oil fields? A. Occasionally; yes.

Q. Have you ever devoted any special study at any time to the equipment necessary for oil production and oil refining?

A. I took a one-year course in oil production and technology, under Professor Uren, at the University of [388] California at Berkeley.

Q. During the time you have been engaged in the selling of equipment, have you sold at various times production equipment? A. Oh, yes.

(Testimony of Thomas Hubbard Clements.)

Q. And you have continually dealt in that line of work, have you? A. Yes.

Q. You originally heard of this transaction, I believe, sometime during the year 1940?

A. No; that isn't correct.

Q. When did you first hear of it?

A. This plant had been standing idle there for many years and as far back as 1938 I contacted Richfield, or in 1937, possibly, to see if we could get some or all of this equipment out of there.

Q. Who did you contact with Richfield? Do you know?

A. I tried various members, Davis and Linhoff.

Q. Who is Mr. Linhoff?

A. Manager of the gas division. And I contacted Day one or two times. He is general manager of refinery operations, I believe his title is, and I contacted their local storekeeper, Mr. McGahan, once or twice away back.

Q. You have testified in your deposition as to the transactions you had with Mr. Davis relative to this from 1938 on, have you not? [389] A. Yes, sir.

Q. In the latter part of 1940, did you contact Mr. McGahan in connection with this Casmalia property?

A. No. I was working with Mr. Davis.

Q. Did you ever discuss at any time the purchase of the equipment at Casmalia with Mr. McGahan?

A. Not that I remember.

(Testimony of Thomas Hubbard Clements.)

Q. Did Mr. McGahan ever tell you at any time in any conversation that the Richfield Oil Company desired to sell their surface equipment at Casmalia?

A. No, sir.

Q. Were you ever present with anybody else, at which time Mr. McGahan discussed in your presence the sale of this merchandise at Casmalia?

A. Before or subsequent to the signing of the contract?

Q. Before the signing of the contract.

A. No; never before.

Q. After the signing of the contract, did you discuss this equipment and material with McGahan?

A. McGahan came up onto the property and I met him on a Sunday there subsequent to the signing of the contract.

Q. At that time had you started to dismantle anything?

A. No. We were just bringing our crews and equipment in. And we had asked or requested that he meet me there on this Sunday to clarify certain issues as to what lines did or did not go which were sprawled across a map which they [390] gave us as a part of the contract, and yet they were foggy and there was quite a little ambiguity there and we wanted to clarify it before we started tearing into it.

Q. In other words, the map didn't correctly portray where the pipelines were, is that correct?

A. That is correct.

(Testimony of Thomas Hubbard Clements.)

Q. So McGahan came up to identify the lines?

A. Yes; and fix a point of termination.

Q. At that time did he tell you the Richfield only expected to be selling the surface equipment?

A. No, sir.

Q. Did he at that time tell you that the casings in the wells were not to be pulled and were not included in this sale?

A. No, sir.

Q. Did Mr. Davis ever tell you that the casings in the wells were not to be included in this deal?

A. No, sir.

Q. Were you familiar with the work done there by Mr. Anderson on the premises prior to the time that you gentlemen started to work there?

A. Well, in this respect, that I saw part of the stuff that he was removing.

Q. We have introduced in court while you haven't been here a contract between the Richfield and Mr. Anderson, dated March, 1940, for the removal of certain equipment from the [391] various wells. Were you there after March, 1940, and before you folks started to work, and observed any work being done by Anderson?

A. Yes; I was there at least two or three times.

Q. And what work was he doing when you were there?

A. Pulling production strings and removing such things as crown blocks and certain steam pumps and stuff.

Q. The crown block is the mechanical apparatus on top of the derrick, is that right?

A. That is right.

(Testimony of Thomas Hubbard Clements.)

Q. Did you observe any of this tubing that was coming out of the wells?

A. I happened to see one load.

Q. Speak a little louder, please.

A. Pardon me.

Q. In your business of selling equipment, do you sell pipe?

A. Surely.

Q. Are you familiar with the condition of second-hand pipe that is usable upon the market for transporting oil and so forth?

A. Certainly.

Q. And, in your opinion, would this pipe that Mr. Anderson was removing—or what was the condition of the pipe that Mr. Anderson was removing?

A. Excellent. [392]

Q. Are you familiar with the kind of pipe and character and condition of pipe that is used for tubing in oil wells in Southern California?

A. Yes, sir.

Q. In your opinion, was this pipe that he was removing usable for that purpose?

A. Yes, sir.

Q. Did you see any corrosion or rusting of the pipe?

Mr. Paradise: Do you mean on that one load?

Mr. Sturzenacker: Yes.

A. Not on this one load.

Q. You are quite familiar with this Casmalia property, are you not?

A. That is correct.

Q. As you testified in your deposition.

A. Yes.

Q. Are you familiar with the kind of tubing that is in that field and the adjacent properties operating from the same oil pool?

A. Pretty closely because I saw a lot of it put in.

(Testimony of Thomas Hubbard Clements.)

Q. And with respect to the equipment that is being used by other operators in this territory, is it the same class of stuff that was used at the Richfield lease?

A. Yes.

Q. And that is in use at the present time?

A. Yes. [393]

Mr. Paradise: In use where at the present time?

Q. By Mr. Sturzenacker: Whereabouts in relation to this Casmalia-Soladino lease in the Casmalia field are operations still being carried on with the same class of tubing?

A. Right across the wash or draw O. C. Fields is still operating that old Associated lease.

Q. You were in charge of the removal of the equipment there, were you? A. Yes, sir.

Q. And as to the other equipment that you removed, what was the condition of it?

A. Will you clarify what you mean by other equipment?

Q. How about the buildings?

A. There were two very excellent warehouses on the property and the corrugated buildings such as covered the boiler units were in fair shape. We realized fairly good, I imagine, on the sale of that galvanized material.

Q. How about the pipelines that were on the property that you removed?

A. They were all excellent with the exception of one spot where they went through marsh land there. Very corrosive waters lay in this marsh land.

(Testimony of Thomas Hubbard Clements.)

Q. Were there various pipelines running from the various wells to tanks?

A. Yes; the property was just criss-crossed with them [394] every which way.

Q. Were those on top of the ground or below the ground? A. Largely on top.

Q. And in what condition were those pipelines?

Mr. Paradise: If the court please, I object not only to this particular question but to the line of questions on the basis of materiality. I am wondering if there is any materiality in this lawsuit as to what the actual condition was of certain portions or perhaps all of the equipment after it was taken off. If the court please, if it is material, it may be necessary to bring in rebuttal testimony on that but I can't see that the actual condition, whether it was good or scrap or must be reconditioned or was good without reconditioning it, is material to any of the issues in this case.

The Court: On what theory did you inquire into it?

Mr. Paradise: I was rebutting, in the first instance, some of the examination that was made of Mr. Kelly and of Mr. Davis and, in the second place, as to what the intentions of Richfield were, that is to say, what their opinion of it was rather than the actual condition, first, as to whether its condition was such that it was usable and, second, whether the nature of it, regardless of its condition, was usable in further operations. But what it actually turned out to be I can't see is material unless the plaintiff is trying to prove Richfield made a bad deal because the condition of the [395] equipment was better than Mr. Montgomery and Mr. Kelly thought it was.

(Testimony of Thomas Hubbard Clements.)

The Court: I rather think that this line of testimony that is being offered is to contradict some of the testimony of Mr. Montgomery as to what was the condition of the material, which formed the basis which he stated was one of the reasons why Richfield was desirous of getting rid of it. Is it being offered for any other purpose?

Mr. Sturzenacker: For that purpose and also for the purpose of showing the stuff was in good condition and could have been used for producing the field but that they absolutely abandoned the thought of even producing the field, and I think we can show that. Did Mr. Clements answer that last question, Mr. Reporter?

(Record read by reporter.)

A. Which pipelines are you referring to?

Q. The pipelines running through the field.

A. They were very excellent, as I say, with the exception of those that were submerged in one spot. The production lines leading from the wells to the production tanks and thence to the dehydration plant and then over into finished storage were all in excellent shape.

Q. How about the pipe leading from the storage tanks to the loading platform?

A. It was very excellent.

Q. What was the condition of the tanks, Mr. Clements? [396]

A. Most of them were corrugated iron and those which were filled with oil, which quite a few were, were in excellent shape. Some of them, however, were practically empty and water, rain water, had entered in over a

(Testimony of Thomas Hubbard Clements.)

period of years and corrosion had taken place at the water line and they were shot. I would say that about a third of the corrugated iron tanks had to be scrapped.

Q. And the rest of them were sold as tanks?

A. Yes, sir.

Q. Was there any oil in these tanks?

A. Oh, yes; quite a lot of them had oil in them.

Q. Is it true that the only oil that was in the tanks was tank bottoms?

A. Oh, heavens no; there was a quite a little oil in the tanks. However, it was not as much as we thought originally because a lot of distillate in some of the refinery tanks was floating on top of the water and gave us false readings.

Q. After you folks started to work up there, what, if anything, did you do about getting ready to pull the casing out of the wells?

A. We decided, first, we had to clear the surface of all of these surface production lines which were just criss-crossing all over and clear the ground before we took any steps toward pulling the wells.

Mr. Paradise: May I hear the question?

(Question read by reporter.) [397]

Q. By Mr. Sturzenacker: And after you got the ground cleared, what did you do?

A. We proceeded to call in two or three contractors who specialized in well pulling.

Q. In other words, it wasn't your idea of pulling the wells yourselves?

(Testimony of Thomas Hubbard Clements.)

A. No. We wanted to bring in subcontractors who had special equipment for pulling that casing.

Q. And did you consult with various of these people?

A. Two or three; yes.

Q. And then what else did you do in connection with it?

A. As a matter of fact, we made a contract with Mr. Evans of Long Beach to pull one well as a test to see how his equipment would work out.

Q. Is that Evans or Owens? A. Owens.

Q. About when was that?

A. It was in the summer.

Q. The summer of 1941? A. Yes.

Q. Up to that time had anybody in Richfield ever told you that the casing in the wells wasn't to go on this deal? A. No.

Q. Had any of the employees or officers of Richfield been on the premises at any time when you were there?

A. No. The only time I remember seeing anyone from [398] Richfield was the time Mr. McGahan came up there and met me on one Sunday.

Q. Did you ever talk to any of the people at Richfield, Mr. Davis or any of those people, relative to the exclusion of certain articles and so forth on the lease after the contract was signed?

A. Well, that is kind of involved. On this map which Mr. McGahan came up to clarify there was an exclusion of certain gas lines on that and an exclusion of certain pipelines connected to the production tanks which they intended to keep for a while.

(Testimony of Thomas Hubbard Clements.)

Q. Well, in addition to the stuff that was marked on the maps?

A. No; there was no other discussion.

Q. After you started to wreck the premises, did you determine that some of the stuff that you folks had bought didn't belong to Richfield?

A. I don't remember of any such condition.

The Court: I can't hear you.

A. I don't remember of any such thing.

Q. By Mr. Sturzenacker: Relative to this gas line that was excepted, do you know the condition of the well from which that gas line came?

A. No, sir; I don't know the condition. I never pulled it and wouldn't know.

Q. Did you and Mr. Ferer have any conversation relative [399] to the saving of that gas in the well for the use of the superintendent's house at any time?

A. Yes. When we were originally discussing the recoverable pipe from the wells, he raised the point that we would lose the pipe in those one or two wells which were hooked to this dry gas line and I pointed out to him that the removable casing would be probably in very poor condition in those two wells because they were more or less dry wells and producing primarily gas, and the two-inch line which conveyed that gas from those wells to the superintendent's house had to be replaced by this superintendent about every year or so. The gas as gas was really pure hydrogen sulphide and very highly corrosive and the assumption was that any casing removed from those two particular wells probably wouldn't be of any particular value.

(Testimony of Thomas Hubbard Clements.)

Q. Did this conversation take place at the time or after the inspection of the premises?

A. It took place after because we didn't know until we got the final contract that there was this exclusion on those wells with this connecting line.

Q. In estimating the amount of pipe to be pulled from these various wells, you had taken that into consideration? A. Oh, yes.

Q. Would it be possible to take any of the casing in those wells that were reserved, well or wells that were reserved for the production of gas, without destroying the [400] gas production from the well?

Mr. Paradise: I object to that question, if the court please. In the first place, I think the proposition has been made repeatedly both by the plaintiff and the defendant that there is no provision in the contract expressly reserving the wells, as the question implies, and, second, that there was no conversation about the wells between the parties during the negotiations, either about the wells or the removal of casing from the wells. Furthermore,—

Mr. Sturzenacker: I will withdraw the question.

Q. Was it your understanding, Mr. Clements, after the signing of the contract, that the well or wells from which gas was at that time being obtained were to remain in such condition as that those wells would continue to produce gas for the superintendent's house?

A. That is correct.

Q. And, taking that into consideration, could you still pull some of the casing out without defeating that purpose? A. Correct.

(Testimony of Thomas Hubbard Clements.)

Mr. Paradise: I object to that question, if the court please, on different grounds, that is to say, that the question is entirely incompetent, irrelevant and immaterial and has no effect on any of the issues in this case, which are to determine what the intention of the parties was prior to the execution of the contract and, also, to determine what notice or knowledge or suspicion the plaintiff had of [401] the defendant's intentions; further, that there is a lack of foundation because, as the court knows, there is a statutory requirement that requires the approval of the Division of Oil and Gas of the State of California for the removal of any casing from any well in the State of California. The lack of foundation is that there is no proof of what those requirements in connection with this well or any of the other wells were, and on the further ground that the plaintiff's position and theory of the entire case has been that they intended to abandon the wells rather than to attempt to pull any of the casing without abandonment of the wells. It is acknowledged in correspondence between the parties as well as in the plaintiff's verified pleadings.

The Court: I am not sure that you are discussing the same thing. Do I understand from the pending question that you are merely asking the witness whether, from a purely mechanical standpoint, certain casing could be removed from a well without injuring the hole, is that it?

Mr. Sturzenacker: Without injuring the production of gas from that well, which is strictly mechanical.

The Court: I still don't see that we are concerned with that in this case, since the parties admit that the wells from which gas was being drawn for the superin-

(Testimony of Thomas Hubbard Clements.)

tendent's house, together with any additional wells that might be required for that purpose, were not involved in this deal.

Mr. Krasne: That is not exactly correct, Your Honor. [402] The reservation was of a gas line leading up to a well or wells. Notwithstanding Mr. Paradise's observations a moment ago in support of his objections, one of the famous points urged by Mr. Paradise as to why the parties must have intended to preserve or to exclude the wells was that, since a gas line was specifically excluded and since it led up to a well, it must, therefore, follow that the wells or the casing in the wells were, likewise, to be excluded. I think we can prove by this witness and other witnesses, if necessary, that we could still preserve the gas line, which was the only excluded item for the purpose of serving the caretaker's house with gas, without still losing a portion of the pipe in the wells.

Mr. Paradise: If I could make an observation on that, if the court please, it is my position that that is completely an afterthought on the part of the plaintiff following the hearing on the motion for a summary judgment. The point that was made at that time was that there was no discussion, as shown by the depositions of both Mr. Ferer and Mr. Clements, whatsoever of any of the wells, that is to say, discussion between themselves or between them and Richfield as to the abandonment or non-abandonment of any of the wells to which the gas line ran; that the matter was never discussed between the parties. And I drew the necessary and proper inference from that that the plaintiff did not intend to make any distinction whatsoever; that, if they did intend [403] to pull casing from

(Testimony of Thomas Hubbard Clements.)

the wells, they made no distinction whatsoever between the wells from which the gas was flowing and the other wells, and for that reason that there was a complete absence of the meeting of the minds. And that was one of the bases, if the court please, for the first count of the counterclaim for reformation, and that was that the plaintiff, if the court will recall, if they did intend to abandon wells and pull casing from the wells, did not intend to do so under the provisions of the contract, which require that all be done, that is to say, that all equipment to be dismantled be abandoned, in accordance with the contract.

The Court: Do I understand you to say that the evidence thus far introduced would support a finding to the effect that there was no meeting of the minds of the parties?

Mr. Paradise: Yes, if the court please.

The Court: If such a finding would be made, would that also then entitle the parties to be restored to their position so far as that can be done financially, that is, the position they held before they entered into the contract?

Mr. Paradise: It is not a matter of a rescission of the contract, if the court please. This is a matter of reformation of the contract as to one portion of the subject matter. As to that particular portion, the plaintiff is asserting that that portion is a part of the subject matter. It is the defendant's position that that was never a part of the subject matter under any circumstances; that, in the first [404] place, an interpretation of the contract itself, both on the face of the contract and in the light

(Testimony of Thomas Hubbard Clements.)

of the surrounding circumstances, shows that that was not true, so that there was no occasion for any restoration or placing the parties back in their original position.

The Court: It is not clear in my mind just how you reason this out. If there was no meeting of the minds, shouldn't both plaintiff and defendant be restored to the position they held before they entered into the deal?

Mr. Paradise: No, if the court please; that is to say, there was no meeting of the minds of the parties as to the abandonment of these wells. The proposition on the counterclaim for reformation on the basis of mutual mistake is the basis of the evidence shown in the depositions that the plaintiff, if it did discuss and did consider that it was entitled to abandon these particular wells, never intended to abandon all of them, that is to say, their intention was only to abandon such of them as should be profitable, to add to their profit in the transaction. Now, I say that, when the court reads that evidence and reads that in the light of the provision of the contract, and, as I recall, it is paragraph 2 which recites the over-all conditions of the contract which would be applicable to what subject matter the court determines is covered by the contract, the court will see that that provision of the contract requires the plaintiff to dismantle and remove all the equipment and [405] facilities which are the subject matter of the contract. Now I say that the failure of the meeting of the minds of the parties is the fact that the plaintiff has already testified in this case in the depositions that there was no intention to abandon all of the wells and the plaintiff has already testified, as shown by Mr. Clements' deposition, that they intended to assume no obligation

(Testimony of Thomas Hubbard Clements.)

whatsoever in connection with the abandonment even of the profitable wells. Therefore, I say any failure of the meeting of the minds is only in connection with the matter of the obligation to abandon all or any part of the wells. So there would be no occasion for attempting to rescind the contract.

The Court: Mr. Reporter, may we have the pending question read?

(Question read by reporter.)

The Court: I think the discussion discloses that this line of evidence, while it is open to argument as to what weight should be attached thereto, is, nevertheless, admissible and I will let it stand.

Mr. Paradise: May I add one further point to the objection, if the court please, that is to say, lack of foundation? There is no showing that this was considered or discussed by Mr. Clements prior to the execution of the contract. The way the question is framed it calls for an answer as of the present.

The Court: Would your answer be the same if the question [406] related to the time that you entered into the deal?

A. As I understand it, the question was originally asked in taking the deposition if we would abandon every well.

The Court: I will strike that out. You are not evidently paying attention to what I am asking you. So I will reframe the question. Purely from a mechanical standpoint and nothing else, could the casing in the gas well or wells from which pipelines led to the superintend-

(Testimony of Thomas Hubbard Clements.)

ent's house have been removed at the time you entered into this deal with the defendant without affecting the drawing of gas from such well or wells?

A. It could.

Q. By Mr. Sturzenacker: Mr. Clements, you were not here while Mr. Davis was testifying but do you recall, during 1940, of having any consultations or conversations with him relative to the purchase of this Casmalia property?

A. Several.

Q. And is there any way that you can at this time refresh your memory as to any particular date that you discussed anything with him?

A. I can even prove it by letters and correspondence.

Q. You have that correspondence with you, have you?

A. I have.

Q. Will you just glance at it and refresh your memory as to the date when you discussed the purchase of the Casmalia [407] equipment with Mr. Davis?

A. Yes, sir.

Mr. Paradise: May I see the correspondence?

Mr. Sturzenacker: Yes; you may.

Q. Will you show it to Mr. Paradise, please?

A. Under date of September 25th, I wrote Mr. Davis a letter.

Q. Does that refresh your memory as to when you had the conversation with him?

A. Yes, sir.

Q. And does that refer to the purchase of the equipment at Casmalia?

A. Yes, sir.

(Testimony of Thomas Hubbard Clements.)

Q. Was that all of the equipment or a portion of it?

A. A portion.

Q. And did you bid on it?

A. He wouldn't let me bid on the whole thing. As a matter of fact, he said, if I would bid on these particular items which I needed particularly, that he would take it up with the management and see if he could effect their disposal.

Q. Did he tell you at that time the management had directed him to dispose of all the equipment?

A. No, sir. He said that the purchasing department had been after both the production department and the manufacturing department to get together to dispose of that equipment [408] but he could never get them together.

Q. That was September 27, 19 what?

A. September 25, 1940.

Q. After September 25, 1940, did you have any further conversations with him relative to the purchase of all this equipment at Casmalia?

A. Yes. He told me he would keep me advised and, when the thing was nearing approachment, he would so notify me so I could go up there and look it over again.

Q. And did he notify you finally? A. He did.

Q. Approximately when was that?

A. About the middle of November.

Q. Between September 27th and the middle of November, did you ever ask Mr. Davis if the property was ready to be sold?

(Testimony of Thomas Hubbard Clements.)

A. On at least three occasions.

Q. Did you ever meet Mr. Davis at any time?

A. Surely. I was in his office many times.

Q. And that was prior to the time that you and Mr. Ferer went in with a check on the 8th day of January, 1941?

A. Correct.

Q. You discussed the purchase of the equipment with him at various times, did you?

A. I not only did that but I purchased two plants in the year or year and a half prior to that from him. [409]

Q. Had you purchased them through him?

A. Yes, sir.

Q. From Richfield? A. That is correct.

Q. Were those negotiations carried on with him personally or over the telephone?

A. Personally, in his office.

Mr. Paradise: That is, Mr. Davis?

Mr. Sturzenacker: Mr. Davis.

A. Personally, in his office.

Q. The middle of November was the time that he notified you that the property at Casmalia was for sale, is that right?

A. That it was approaching the point, that they were almost at that point, and that there were still some details to be worked out.

Q. And you got in touch with Mr. Ferer?

A. Yes, sir.

(Testimony of Thomas Hubbard Clements.)

Q. How long after that was it before he told you it was actually ready for sale?

A. In the early part of December. I can't place the exact date.

Q. You and Mr. Ferer went up on the property, I believe you testified? A. That is right.

Q. Was it before or after you went up on the property?

A. I had conversations with him both prior and subsequent to that time.

Q. Did he tell you prior to the time you went to the property with Mr. Ferer that the property was now ready to be sold? A. Yes, sir.

Q. Mr. Clements, you testified that you are familiar with various kinds of refining and producing equipment. Is casing in a well considered in the oil fraternity in this locality as part of production equipment?

A. Why, sure.

Q. Is there any other distinguishing classification that casing is put in other than production equipment?

A. None that I know of.

Q. Was there anything particularly—I will withdraw that. Was there anything peculiar or extraordinary about the pipelines that had been installed in this Casmalia lease?

A. Only inasmuch as they were all made of drill pipe, practically speaking. In other words, they were double the normal thickness of lines usually used for production. In other words, they were not standard weight pipe but they were just double weight pipe.

(Testimony of Thomas Hubbard Clements.)

Q. And in what condition were the fittings and unions and other things that were taken from the property?

A. They were in excellent condition.

Q. What happened to those fittings?

A. They were brought to Los Angeles and disposed of. [411]

Q. And where were they disposed of? Do you know?

A. Well, a large portion was returned back to major oil company warehouses.

Q. Did you make those transactions yourself?

A. I made the sales largely; yes.

Q. You sold them? A. Yes.

Q. And do you know for what purpose those fittings and other things, valves and so forth, taken from the Casmalia lease were used by the other companies?

A. Well, they went back into their general warehouses. I don't know where they finally ended up. We had no trouble disposing of them.

Q. In your opinion, Mr. Clements, what were they usable for?

A. Any use that you might require in producing or refining.

Q. Of oil? A. Of oil.

Mr. Sturzenacker: You may cross-examine.

The Court: May I inquire in reference to one of the answers you gave? You said something to the effect that, along about September, 1940, Mr. Davis told you that he had not yet been able to get two certain departments of Richfield together to decide what equipment at Casmalia would be sold. What were those two departments? [412]

(Testimony of Thomas Hubbard Clements.)

A. The production and the manufacturing.

The Court: I can see that the estimate about this witness requiring only a short time is a little bit shy. We will take a recess until 2:00 o'clock this afternoon.

(Whereupon a recess was taken until 2:00 o'clock p. m. of the same day.) [413]

Afternoon Session

2:00 o'clock

(Appearances as last noted.)

T. H. CLEMENTS

recalled.

Cross Examination.

Q. By Mr. Paradise: Mr. Clements, do you have an interest in this transaction, that is to say, in the Aaron Ferer & Sons part of the transaction in the purchase of the salvage equipment at Casmalia? A. Yes.

Q. What is the nature of that interest?

A. It is predicated on one-third of the net returns from the transaction.

Q. Do you mean that you are to obtain one-third of the profits? A. That is correct.

Q. That is to say, the overall profits in the transaction after sale of the salvage equipment?

A. After all expenses.

Q. Were you to stand any portion of the losses, if there was a loss?

A. We didn't figure on any.

(Testimony of Thomas Hubbard Clements.)

Q. There was no arrangement on that?

A. Not that I recall. [414]

Q. Was this an oral or written arrangement between you and Aaron Ferer & Sons? A. Oral.

Q. When did that occur?

A. Sometime in the middle of December.

Q. Is it your recollection that you were not to bear any part of the losses if there were to be any losses?

A. It has never been raised. I would stand my portion of any losses, naturally.

Q. I didn't hear you.

A. I would stand any proportion of the losses.

Q. What share? A. One-third.

Q. Was that your arrangement, then?

A. There was no arrangement like that made but I would do that, naturally.

Q. I was asking you what your arrangement was with Aaron Ferer & Sons.

A. The point was never raised.

Q. Then, the only point that was discussed was the share of the profits? A. That is it.

Q. I don't know whether I correctly understood you on your direct examination. Is it true that you did or did not have any talks with Mr. McGahan prior to the execution of this contract? [415]

A. I had numerous conversations with him.

Q. I mean about this transaction.

A. None prior to the confirmation of the contract.

(Testimony of Thomas Hubbard Clements.)

Q. Prior to the signing of the contract, do you mean?

A. Well, there was a conversation, where he was present, in your office but none before that time.

Q. Did you have any conversation with Mr. McGahan in Mr. Davis' office?

A. I don't recall whether he was present on the drawing of the preliminary contract or memorandum there or not. I don't recall at the present time. However, I had numerous conversations with Mr. McGahan at his office because I was currently buying merchandise there.

Q. Did you have any conversations with Mr. McGahan at Mr. McGahan's office, during November or December of 1940, in connection with this proposed purchase of salvage equipment at Casmalia? A. No.

Q. You say you did not? A. No.

Q. Do you recall definitely that you did not?

A. Not to my knowledge.

Q. Mr. Clements, do you recall your deposition that has heretofore been taken in this case?

A. Why, sure.

Q. I would like to read to you from that deposition [416] certain questions and answers starting on page 20 and continuing to page 21. On page 20, in line 6, the question was,

"Can you fix the time when the transaction was ready to be bid upon and with whom you had a conversation, with what Richfield employee?

(Testimony of Thomas Hubbard Clements.)

"A.—The last step was when Mr. Davis told me to get in contact with Mr. McGahan and that McGahan would be calling for bids very shortly. I think that was the general context of the conversation.

"Q.—Was that all that was said?

"A.—That is all I recall.

"Q.—Did Mr. Davis outline to you the particular facilities and equipment that were to be sold in that conversation?

"A.—No. As a matter of fact, at that time I don't believe they knew what they wanted to let go; that the thing was more or less indefinite, and hazy."

Then there is an objection, which I will omit.

"Just state, Mr. Clements, what was said to you rather than what you thought. Then what occurred? Did you talk to McGahan?

"A.—Yes; I talked to McGahan.

"Q.—Where did that conversation take place? Was it in the Richfield office?

"A.—In his Long Beach salvage office.

"Q.—Will you state what occurred? Were there just the two of you present? [417]

"A.—Yes. I don't remember talking with him in front of anyone else.

"Q.—And can you fix the time of that conversation?

"A.—Well, it was, I imagine, around the 1st of December, 1940.

(Testimony of Thomas Hubbard Clements.)

“Q.—What was said as closely as you remember?

“A.—He said that I had better go up there and take another look at it; that they would call for bids pretty quick. And I remember at the time asking him if there was any deadline on it and, as I recall, he said there was no definite deadline, although I wouldn’t take oath to that remark. And when it came to that point then, of course, I knew it involved more money than I had, and then I started looking around to see who I could get to help underwrite it.

“Q.—Was there any statement by Mr. McGahan as to what facilities and equipment Richfield was willing to sell?

“A.—As I recall, he said he wanted to sell everything with the exception of six big storage tanks and some other equipment which had previously been sold or was under process of being sold at the time.”

Do you recall that those questions were asked of you at that time? A. I had forgotten them.

Q. Do you recall whether you gave those answers?

A. After reading it, yes.

Q. You did give those answers to those questions?

[418] A. Yes.

The Court: Where did you stop?

Mr. Paradise: That was at the bottom of page 21.

Q. I believe you testified in connection with Mr. Anderson’s work in the summer of 1940, Mr. Clements, that Mr. Anderson had pulled the production strings from the wells, is that correct?

(Testimony of Thomas Hubbard Clements.)

A. I don't know how far he went. I saw one load of them.

Q. You saw one load? A. Yes.

Q. Did you testify whether the production strings had been pulled?

A. No; I didn't testify to it.

Q. Well, do you know whether they were?

A. I have been so informed.

Q. To what do you refer as production strings?

A. These wells were on the pump and it is the two and one-half or three-inch pipe through which the sucker rod works up and down.

Q. Is that what is commonly known as the tubing?

A. Well, sometimes there is another pipe surrounding that which is known as the tubing, in which the gas is subtracted from the well.

Q. Is what you refer to as the production string or the tubing cemented in the well? A. No, sir. [419]

Q. Do you know what casing is in an oil well?

A. Yes, sir.

Q. How does the casing differ from the tubing or production string?

A. Generally in size and also as to its usage.

Q. Is it installed in a well differently?

A. As a rule.

Q. Will you describe the manner?

A. As a rule, it is cemented in on the bottom edges to the formation. There are cases, however, in which it is put in with a temporary packer.

(Testimony of Thomas Hubbard Clements.)

Q. I am afraid I didn't understand your answer.

A. There are cases where it is put in with a temporary packer.

Q. But it differs from tubing or the production strings, is that right? A. And in usage.

Q. And in manner of installation, isn't that true?

A. It is installed in the same manner.

Q. And the production or tubing is run in and out of a well very often, is it not, in connection with the production operations and changed during the life of the well?

A. More frequently because of the wear and tear on it.

Q. That is not true of the casing, is it?

A. No, unless there is an earthquake or some other damage occurring to it, which occurs occasionally. [420]

Q. Isn't it true that what is commonly referred to in the oil industry as casing is the pipe that is cemented in an oil well? A. That is true.

Q. Is it not also true that the general usage and common meaning of the phrase "production equipment" in the oil industry is the equipment which is installed in a well after the well has been drilled and after the casing has been cemented, and that production equipment refers and always refers to the equipment that is put on afterwards for the purpose of the operation of the well?

A. I wouldn't say that necessarily followed.

Q. In what respect is that not true?

A. I think any of the pipe used in the performance of a well is production equipment.

(Testimony of Thomas Hubbard Clements.)

Q. I am talking about the usage of the phrase, the common and ordinary usage of the phrase, in the oil industry.

A. I don't believe that is true.

The Court: Can you hear the witness? At times I find it difficult and I am only a few feet from the witness.

Mr. Krasne: It is very hard sometimes.

Q. By Mr. Paradise: What was your estimate of the tonnage of the recoverable casing from the wells on the property, that is to say, the estimate that you made at the time that you testified in your deposition that you made an estimate when you and Mr. Ferer examined the property?

[421] A. Well, we always assumed there would be a minimum of 1,000 tons and upward.

Q. Did you estimate a maximum?

A. No; we never estimated a maximum because I thought there was some wells on the property not properly located on the map.

Q. Isn't it true that you formerly testified that you estimated a minimum of 50,000 feet of recoverable casing and a maximum of 100,000 feet?

A. That is possible.

Q. Well, is that correct or incorrect?

A. Well, we never got down to specific cases. We knew we could get at least a minimum of 1,000 tons under any conditions.

(Testimony of Thomas Hubbard Clements.)

Q. Did you make an estimate of a maximum recovery at that time?

A. We were unable to. No one could do that until they pulled the wells.

Q. Would you say that you did not make an estimate of a maximum?

A. No; we didn't make a maximum estimate at any time as far as I was concerned. As a matter of fact, Mr. Ferer asked me that question and I would not put a maximum on it.

Q. Calling your attention, Mr. Clements, to your deposition, I refer, first, to page 46, starting at line 15, where the question was asked you, "When you talk then about [422] recoverable casing—" I will withdraw that, if the court please.

Starting on page 45, line 19, "Q.—On what basis did you estimate that there were 50,000 feet of recoverable—I will withdraw that. What do you refer to as recoverable casing?

"A.—The amount you can get out of the well and still comply with your abandonment program as set forth by your State Bureau of Mines, their rules and regulations.

"Q.—Do you mean that you cannot take out all of the pipe that is put in a hole?

"A.—Oh, no. You can only take out that which is, you might say, excess above that which is necessary to seal off encroaching waters or oil seepages from one strata to another."

That stops in line 3 on page 46. Then, commencing in line 15 on page 46, "Q.—When you talk, then, about recoverable casing, you mean the quantity that you can take

(Testimony of Thomas Hubbard Clements.)

out over and above the quantity that the Mining Division of the Bureau of Oil and Gas requires to be left in there, is that correct?

“A.—That is correct.

“Q.—That is the quantity you are talking about when you say a minimum of 50,000 feet and a maximum of 100,000 feet?

“A.—That is right.”

That terminated in line 23 on page 46. And, on page 59, in line 4, the question was asked you, “What was the tonnage of the recoverable casing that you estimated between [423] the limits of 50,000 feet and 100,000 feet?

“A.—We based it on an average of 10-inch pipe and that pipe would run approximately 40 pounds a foot in those days. That was a rather lightweight 10-inch pipe and, if you took 50,000 feet out, it would be simple mathematics that it would be 50,000 times 40 minimum.

“Q.—That would be a minimum of 1,000 tons, would it not?

“A.—That is right.

“Q.—And a maximum of 2,000 tons?

“A.—That is right.”

Do you recall that those questions were asked of you and that those were the answers you gave at the time of your deposition, Mr. Clements?

A. Yes; but we had another idea in mind as well. We were referring only to usable pipe and we knew all of that casing coming out of the wells would not be usable.

(Testimony of Thomas Hubbard Clements.)

Q. Did you state that at the time in this deposition when I asked you how much you estimated you would recover?

A. You were asking the questions.

Q. I asked you, did I not, what the recoverable casing would be? A. Recoverable or usable.

Q. I said recoverable.

A. We didn't know what the maximum recoverable would be and that would be the answer at the present time. I wouldn't know how much the maximum was. [424]

The Court: May I ask where you stopped reading the last excerpt?

Mr. Paradise: That was in line 15 on page 59.

Q. I believe the question was asked of you this morning, Mr. Clements, whether as a matter of practical operation casing could be taken or removed from a well without abandonment, and that you answered that it could, is that correct?

A. That is true; it could.

Q. If I should ask you the same question, would your answer be the same, that casing could be taken out without abandonment of the well?

A. Yes, sir; it could.

Q. I call your attention to your deposition on page 84, commencing in line 14, and will read you the question.

"Q.—Mr. Clements, to remove casing from an oil well, is it necessary to abandon the well, do you know?

"A.—Yes."

That terminates on line 16.

(Testimony of Thomas Hubbard Clements.)

The Court: Again, may I have the page reference?

Mr. Paradise: Page 84, lines 14 to 16.

A. Your Honor, could I say something at this time?

The Court: Have you finished the question?

Mr. Paradise: I was going to read further from the deposition but I will be willing to let the witness make his explanation.

The Court: All right. [425]

A. Your Honor, in an oil well there are generally three or four strings of casing concentric one to the other. If you are abandoning them, you would cut off at progressive steps down, leaving a cement ring from one step to the other, like stair steps. If you wanted to take a center string out of the well, you could still do that and not form a point where you would have an ingress of water. And that is the question he raised when we were speaking of the removal of some casing, not of casing especially on this gas well. If you mean total abandonment, there is a distinction there not brought out. If you mean total removal of all casing, that is abandonment. If you mean removal of a portion of the casing, you could remove that without even reference to the Mining Bureau that you would so remove it later. It doesn't come under the classification of abandonment proceedings.

Q. Mr. Clements, are you familiar with any statutory requirements in California concerning the removal of any casing, any part of casing, from a well located in California?

A. I am.

(Testimony of Thomas Hubbard Clements.)

Q. Do you know what those requirements are?

A. That you must report to the local office of a district not only the removal of casing but even a production string or even a sucker rod.

Q. It is true, is it not, that you cannot remove any of the casing from any well in California without complying with the rules and regulations and the particular requirements as [426] to that well as dictated to you by the Oil and Gas Supervisor of the Division of Oil and Gas? That is correct, is it not?

A. Will you repeat the question, please?

(Question read by reporter.)

A. Well, to the first part of the statement in the question the answer is yes, but I think you have two questions.

The Court: Well, split it into two questions as you understand it.

A. If you made a step which would constitute abandonment as described by the State, you would have to so notify the State before you made that step, but the removal of one piece of production string or any part of a production string—I don't believe you would have to even ask the permission of the State before you made that step. You would have to go ahead and notify the State that you had done so but I don't think you would have to ask their permission before because you haven't involved your neighbors. It is for the protection of your neighbors that the statute is instituted.

The Court: When you used the expression to remove a part of a production string, did you mean any part of the casing in an oil well?

(Testimony of Thomas Hubbard Clements.)

A. Any removal of casing as well as production strings has to be so reported to the State continuously.

The Court: I am afraid you didn't understand the [427] question. A moment ago I understood you to testify to the effect that you may remove a part of a production string without getting permission from any State agency. Is that what you testified?

A. Yes; if there is no hazard.

The Court: When you used the expression "any part of a production string," did you mean thereby any part of the casing in an oil well? A. Yes, sir.

Mr. Paradise: Was his answer yes, Mr. Reporter? I couldn't hear. A. Yes.

Q. Have you ever in the course of your experience in the oil business, Mr. Clements, become familiar with the provisions of the law applicable to the removal of casing or any other operating structure from an oil well?

A. Sure.

Q. Are you familiar with Section 3233 of the Public Resources Code? A. Probably not by number.

Q. I would like to read to you the first paragraph of Section 3233 of the California Public Resources Code and then ask you if you are familiar with that statutory requirement. It says, "Removal of rig, etc.: Notice of intention: Time for notice: Action on notice: Effect of failure to act: Report of work done. No person, whether as principal, agent, [428] servant, employee, or otherwise, shall remove any rig, derrick, or other operating structure, or the casing or any portion thereof, from any well without first giving written notice to the super-

(Testimony of Thomas Hubbard Clements.)

visor or district deputy of his intention to remove such rig, derrick, structure, or casing from such well." Were you familiar with that statutory requirement?

A. Sure.

Q. Had you ever inquired, Mr. Clements, what the requirements of the Division of Oil and Gas would be before any of the casing could be removed from any of the wells in the Casmalia field?

A. Not only that but I went to the Santa Barbara office of the supervisor of that territory and found the Richfield had not—

Q. Just a minute—

Mr. Krasne: Let him finish his answer.

Q. By Mr. Paradise: I want to inquire as to when this examination took place. I want to ask you if you made any inquiry of the Division of Oil and Gas concerning their abandonment requirements at any time prior to the date of the execution of this contract. A. Yes.

Q. You did? A. Yes.

Q. Prior to the date of the execution of the contract?

A. Yes. [429]

Q. The contract was dated, as you know, January 17, 1941?

A. Yes. May I finish my answer?

The Court: May I have the question?

(Question read by reporter.)

The Court: I think that only calls for a yes or no answer. The witness has not as yet been asked to disclose what he ascertained.

(Testimony of Thomas Hubbard Clements.)

Q. By Mr. Paradise: Do I understand, then, that you did make an inquiry of the Division prior to January 17, 1941? A. I did.

Q. What inquiry did you make?

A. I went to the office and asked—or every district has more or less their own rules or at least they have different interpretations. Some divisions are more strict than others. So I went to that office.

Q. To which office?

A. The Santa Barbara office. The original office for that territory was in Santa Maria. So I had to go to Santa Barbara to find out if there was any special stipulations on that district and found that they were very lax in that district; that they were not looking down your neck all the time.

Mr. Paradise: I move that be stricken as a conclusion of the witness and a volunteered statement. [430]

The Court: What he found out is ordered stricken out.

Q. By Mr. Paradise: When did you make that trip?

A. Oh, around November.

Q. In November of what year? A. 1940.

Q. To whom did you talk?

A. To the assistant in charge. The manager was out at the time.

Q. Pardon me?

A. The assistant in charge there. The manager of that district wasn't there at the time.

Q. Do you know the name of the man to whom you talked? A. I don't recall.

(Testimony of Thomas Hubbard Clements.)

Q. Did you talk to him about abandonment of wells?

A. Yes.

Q. Abandonment of the wells at Casmalia?

A. Yes.

The Court: What did you say that assistant's name was? A. I didn't say. I don't recall.

The Court: Tell us what he looks like. Describe him.

A. I have no idea at this late date. I know at the time I went in there he took out the records of the Casmalia field of these Richfield wells and found, to his dismay, that they had had no report on this for about a year. In other words, they didn't have a report even on the production strings. [431]

The Court: The answer may go out except the first words, since it is a volunteered statement, not in response to the question. Can't you give us any description of what this assistant looked like?

A. No, sir; I can't, honestly.

The Court: You don't know whether he was light or dark or tall or short or smooth-shaven or wore glasses or the color of his hair or anything about him?

A. No.

Q. By Mr. Paradise: Mr. Clements, I would like to call to your attention some questions and answers in your deposition commencing on page 100, starting in line 9.

"Q.—Do you know whether the requirements of the Division of Oil and Gas as to the abandonment of wells are stricter and more stringent where you are in an undepleted field than when the field has been completely depleted and all of the oil take out?

(Testimony of Thomas Hubbard Clements.)

"A.—The abandonment of oil wells has been more or less a human factor with the representative of the department in the particular field, I had always been told.

"Mr. Paradise: Would you read the question, please?

"(Question read by the Notary.)

"Q.—I don't believe you answered that question, Mr. Clements.

"A.—Well, I think as to the abandonment program in any oil field that the determining factor is the nature of the [432] oil field and, as you say, the number of surrounding wells and *may* other factors, that is, if it is an undepleted field and there is a surrounding edge of marginal wells still pumping, it is a cinch they are going to be pretty tough on your abandonment program."

Then, turning back—

The Court: Where did you stop?

Mr. Paradise: I stopped on line 1 on page 101.

Q. Then, turning to page 85 of your deposition, commencing in line 14, "Q.—It is necessary, is it not, to abandon a well in accordance with the requirements of the Division of Oil and Gas of the State of California, isn't that true?

"A.—That is the State law.

"Q.—Are their requirements identical with respect to all wells? "A.—No.

"Q.—Did you know what their requirements would be with respect to these wells? "A.—No.

(Testimony of Thomas Hubbard Clements.)

“Q.—Did you inquire of the Division of Oil and Gas as to what their requirements would be with respect to these wells?

“A.—I did not. I had seen wells, on visiting there, abandoned and I more or less could draw assumptions from that.”

I stopped in line 3 on page 86. At the time of your [433] deposition, were those questions asked of you and were those the answers that you gave, Mr. Clements?

A. I believe so.

Q. I believe you testified this morning something with respect to the gas wells, that is to say, that you did not intend to abandon the gas wells. Was that correct?

A. When we went over the property originally, we didn't know there was going to be any exception on these wells. As a matter of fact, until Mr. Ferer and myself received a blueprint of the property from your office, we did not know there was going to be an exception on any of the wells being pulled.

Q. What was your testimony this morning with respect to wells from which gas was flowing?

The Court: Isn't that kind of a broad question?

Mr. Paradise: I believe it is, Your Honor. I couldn't recall his testimony exactly and that was the reason I asked it in that fashion.

Q. Do I understand from your answer this morning that you did not intend to abandon the wells from which gas was coming?

Mr. Krasne: As of what time?

(Testimony of Thomas Hubbard Clements.)

Mr. Paradise: At any time prior to the execution of the contract.

Mr. Krasne: We object to that on the ground it is incompetent, irrelevant and immaterial what he intended to do with respect to abandonment at the time they were looking the [434] property over and before any offer was made or before any of the terms were reduced to writing or before they understood what the contract was.

The Court: If the question is directed to the attention of the witness when the bid was submitted—perhaps he should be asked as to whether he is familiar with that bid which was submitted by the plaintiff in December of 1940. If so, he may be interrogated as to what his intention was at that time and then, also, what his intention was at the time the check was given and any other time when he was present during the subsequent negotiations.

Q. By Mr. Paradise: I would like, Mr. Clements, first to direct your attention to the date on which you and Mr. Ferer visited the property. Was that the date on which you told Mr. Ferer that the casing that might be pulled from gas wells would not be of good value?

A. We didn't specify gas wells on that occasion. We said there would be some of those wells in which the pipe would be so poor that it would not be profitable to pull them.

Q. You mentioned this morning something about the fact that gas coming from a well would have some effect upon the condition of the casing?

A. Yes; that is correct.

(Testimony of Thomas Hubbard Clements.)

Q. And that you told Mr. Ferer about that on the date when you inspected the property, is that correct?

Mr. Krasne: We object to that. That was afterwards [435] because they didn't know anything about the gas line when they were first up there on their inspection trip.

The Court: I think that is an objection followed by an argument which may be misconstrued. Do you recall anything being said by you to Mr. Ferer, while you were inspecting the Casmalia property, relative to pulling casing out of any gas well or abandoning any gas well?

A. Yes, sir.

The Court: What was said?

A. This property lays more or less going up a hill. There was a ravine and on the other side of the ravine there is really a continuation of the same field and that field there is an oil Associated field, now owned by O. C. Fields. And about two years ago O. C. Fields—

The Court: Just a minute. I am afraid you are wasting your time and our time also. Mr. Reporter, will you read the question?

(Question read by reporter.)

The Court: Suppose you read the preceding question and his answer.

(Record read by reporter.)

A. Well, Your Honor, these wells are not—or one well is not a gas well and the next an oil well. Some of these wells are predominantly gas-makers and those wells

(Testimony of Thomas Hubbard Clements.)

are highly corrosive because that gas is approximately pure hydrogen sulphide. In the other wells the oil stands pretty high in [436] the casing and protects the pipe.

The Court: Do you understand I am asking you for a conversation and so far you haven't given it to me?

A. Yes, sir.

The Court: Now, give us the conversation, if you will.

A. I was telling him I had seen eight wells pulled on the same strata on adjacent property and out of the eight wells six of the casings that came out were perfect and two of them were in bad condition due to corrosion from hydrogen sulphide.

The Court: Did you say anything to him on that occasion about pulling the casing out of or abandoning any gas well?

A. We were discussing the probable footage of pipe which we could remove from those wells and we placed the minimum at 1,000 feet and an average of 2,000 feet per well, and we felt that we should get a minimum of wells that could be pulled of at least 40.

The Court: My question is directed not to all the wells but to gas wells and what, if anything, you said to Mr. Ferer on that subject and nothing else while you and he were on the Casmalia property inspecting it.

A. There are no wells on the property which can be referred to particularly as gas wells.

The Court: So you didn't tell him anything about any gas wells?

A. No, sir. [437]

(Testimony of Thomas Hubbard Clements.)

Mr. Paradise: I wonder if I might ask this of the court. Would the court permit a recess? I would like to have the reporter look through his notes and find the part of the testimony that was asked of this witness about those gas wells on direct examination this morning.

The Court: We will take a 10-minute recess.

(Short recess.)

Q. By Mr. Paradise: Did you discuss with Mr. Ferer, Mr. Clements, the abandonment or non-abandonment of wells from which gas was flowing?

A. No.

Q. At no time during the negotiations and up to and including the date of the signing of the contract?

A. I discussed it with him on the date of the signing of the contract in your office, when the point was raised on the blueprint of the retention of two or three of these wells for gas purposes.

Q. Was there any discussion of it prior to that date?

A. None.

Q. But there was discussion of the retention of wells at that date in my office? A. That is right.

Q. Who were present?

A. There was McGahan—well, let me ask a question. You say discussion. The discussion lay between Ferer and myself and not between us and the Richfield. [438]

Q. Was it discussed in the presence of anyone from the Richfield?

A. No. We went to the corner of the room and held a huddle when it came to that point and were discussing it.

(Testimony of Thomas Hubbard Clements.)

Q. Was that within the hearing of anyone from Richfield or was it a private, secret conversation?

A. It was a private conversation.

Q. Pardon me?

A. It was a private conversation.

Q. Will you state what was said between you and Mr. Ferer?

A. During that huddle, we made up our minds we should have stipulated in the contract all metal and wood and everything else on that property, and at the same time the question was raised about these two or three wells, and I told him to forget it because probably the gas had chewed those wells up so that they would probably be valueless anyhow.

Q. What had occurred in the private conversation between you and Mr. Ferer on the one hand and the Richfield representatives on the other which brought up this discussion about the gas wells?

A. Well, at that time you presented to us a map for our inspection, showing exemptions which we hadn't been informed of before.

Q. That exemption was of the gas line running from the superintendent's house to one of the wells, was it?

[439] A. Not only that, but there was exempted pipelines communicating around tanks from the tank farm.

Q. Was there also exempted and was there also discussed the exclusion of a gas line running from the superintendent's house to one of the wells?

A. That is right.

(Testimony of Thomas Hubbard Clements.)

Q. And was that what prompted your private conversation with Mr. Ferer? A. Yes.

Q. Did you tell Mr. Ferer which of the wells the gas line ran into? A. He saw the blueprint.

Q. Did you tell him anything about it? A. No.

Q. Was there a discussion of which wells you were talking about?

A. There was either two or three shown on the blueprint.

Q. You told him there were two or three?

A. The blueprint showed it.

Q. Well, what was your conversation with Mr. Ferer?

A. He wanted to ask privately if we were going to lose any great tonnage by those exceptions and I said no but that we should go ahead and protect ourselves even further by having all metal and wood on the property included in the contract, to be all-inclusive.

Q. You were talking then with Mr. Ferer about two or [440] three wells, is that correct?

A. Not only that but we were speaking of these other lines which were sprung on us at that time.

Q. Did you and Mr. Ferer discuss the numbers of the particular wells to which you were referring, that is, the well numbers? A. No.

Q. In that discussion with any of the Richfield representatives who were present, and I mean the conversation between you and Mr. Ferer on the one hand and the Richfield representatives on the other, was there any discussion

(Testimony of Thomas Hubbard Clements.)

whatsoever of the abandonment of any of the wells on the property or the removal of casing from any of the wells on the property?

A. It was not discussed.

Q. At the time of your examination of the property with Mr. Ferer, what portion of the pipelines was above the ground and what portion was below the ground?

A. I don't know as I can answer that. I couldn't even today, after the removal, tell you the percentage.

Q. Would you say that more than 50 per cent was above the ground?

A. I would say at least 50 per cent of the pipe which we removed was above the ground.

Q. And were the balance of the pipelines under the surface? A. That is right [441]

Q. Will you tell the court something about valves and fittings that are attached to pipelines? In what manner are they attached?

A. They might be either screwed or flanged.

Q. Are the valves and fittings also attached to that portion of the pipeline that is under the ground?

A. Surely.

Q. Did you examine the condition of the pipelines at any time prior to the execution of this contract?

A. Which pipeline?

Q. The pipelines that you removed as a part of this transaction.

(Testimony of Thomas Hubbard Clements.)

A. We examined all of those in the production area above ground and we looked at all of those in the refinery area above ground and all of those inside of pipes which we could see.

Q. I am talking about the pipelines and the valves and fittings attached to the pipelines.

A. We examined them as far as we could see.

Q. Could you tell the reusable condition of either the pipelines or the valves or fittings without opening the pipelines and looking at them? A. Surely.

Q. You could? A. Yes.

Q. Will you describe how you could? [442]

A. As a rule, in a production line going from a production storage tank, we will say, to a dehydrating plant, there is practically no corrosion taking place in the pipe. The corrosion takes place externally to the pipe.

Q. Are you talking now about something you examined or something entirely aside from this problem?

A. When we examined all of the pipe, we found it good on the exterior and we subsequently found it good on the interior.

Q. Isn't it true that at the time that you examined this equipment prior to the execution of this contract you couldn't tell anything about the condition of that pipe, the pipelines or the valves or fittings, without opening up the pipe and determining what was on the inside of it, whether

(Testimony of Thomas Hubbard Clements.)

the inside had been corroded by the oil or the sulphur or by the water or the steam, isn't that correct?

A. That isn't correct.

Q. In what respect is that not correct?

A. If the pipe has become corroded, it will show leakages at some place or another.

Q. If there were any leakages or corrosion as to the portion of the pipeline underneath the ground, you had no knowledge of that prior to the time you executed this contract, is that correct?

A. That is right. The only pipe we found on examination was poor was the gas gathering lines and the gas disposal [443] lines to the boiler houses. They were all scrapped. We knew that to start with.

Q. When did you open up these pipelines for the first time?

A. When we had a crew up there.

Q. And that was how long after the contract was executed?

A. The first of February, as I recall.

Q. To whom did you sell the pipe that was taken off of the property?

A. Mr. Ferer's office would have the record of that.

Q. Do you know?

A. I know some of the companies to whom I sold; yes.

(Testimony of Thomas Hubbard Clements.)

Q. To whom did you sell it?

A. I sold some to the Kelly Pipe Company and we sold some to some of the local refineries, for instance, we sold some in Santa Maria to practically all of the local refineries, and we sold to the Five C and a plant which has changed its name.

Q. Was the bulk of it sold to the Kelly Pipe Company?

A. Do you mean of the usable?

Q. I am talking of the pipe that was taken off the pipelines.

A. We sold a large quantity to Kelly. Whether they took the bulk I can't answer.

Q. I believe you testified that the pipe was in very [444] good condition with the exception of one small portion of the line, is that correct?

A. That is true, that is, I was speaking of the larger lines.

Q. How much of that line was unusable?

A. Oh, I would say possibly a mile because there were, I think, five parallel lines in this same area and they were from four to six inches in diameter.

Q. How many miles were there clear?

A. I don't remember.

Q. What portion of the lines would you say was unusable when you referred to that part of the line?

(Testimony of Thomas Hubbard Clements.)

A. I would say we had 10 per cent wastage.

Q. And the rest was all usable? A. Yes.

Q. In what condition? A. Good.

Q. In good condition? A. Yes.

Q. Did you recondition the pipe before selling it?

A. No.

Q. Was that reconditioned by the purchaser?

A. Not in the case of the refinery. They went ahead and used it.

Q. No. I am talking about the Kelly Pipe Company.

A. The Kelly Pipe Company always recondition their [445] pipe.

Mr. Paradise: I would like to offer a photostatic copy of a letter agreement between Aaron Ferer & Sons and the Kelly Pipe Company, dated February 7, 1941. Is there any objection to this being used rather than the original?

Mr. Krasne: None at all.

Mr. Paradise: May it be stipulated that this may be offered in evidence?

Mr. Krasne: Yes.

The Court: It may be marked Defendant's Exhibit C. Mr. Reporter, will you read the statement of counsel as to the offer?

DEFENDANT'S EXHIBIT NO. "C".

Scrap Iron All Types
and Metals Waste Materials

[Emblem]

AARON FERER & SONS

(Established Since 1895)

5585 East 61st Street

(At Slauson and Eastern Avenue)

Los Angeles, California

Telephone ANgelus 1-6141

February 7, 1941

Kelly Pipe Company

525 North Mission Road

Los Angeles, California

Attention: Mr. C. E. Ulrich

Gentlemen:

This letter will be considered as an addenda to your order No. 12984 of January 30, 1941, concerning the purchase of certain pipe, together with the terms of payment.

The price of all pipe selected by you is at the rates set forth below, based on \$41.20 per ton, F.O.B. cars Los Angeles; all pipe to be measured before loading on cars at Casmalia, such measurements to be the ruling factor in settlement.

¾"	1.13#	per ft.	at \$41.20	per ton cars L.A.—	\$2.33	per cft.
1"	1.684#	per ft.	" " " " " "	—	\$3.469	" "
2"	3.678#	per ft.	" " " " " "	—	\$7.576	" "
2½"	5.819#	per ft.	" " " " " "	—	\$11.987	" "
3"	7.616#	per ft.	" " " " " "	—	\$15.688	" "
4"	10.889#	per ft.	" " " " " "	—	\$22.431	" "
6"	19.185#	per ft.	" " " " " "	—	\$39.521	" "
Any 6"	heavier than standard			—	\$43.00	" "
8"	25.00#	per ft.	at \$41.20	per ton cars L.A.—	\$51.50	" "
8"	28.00#	per ft.	" " " " " "	—	\$57.68	" "
Any 8"	heavier than 28.00#	to be figured as				
28.00#	or			—	\$57.68	" "

(Defendant's Exhibit No. C)

2—Kelly Pipe Company—Mr. C. E. Ulrich

10" —35.00#	per ft. at \$41.20	per ton cars L.A.—\$72.10	per cft.
10" —40.00#	per ft.	" " " " " —\$82.40	" "
Any 10" pipe 40# or heavier to be figured as			
40# pipe or		—\$82.40	" "

Kindly sign the copy herewith, if acceptable, retaining the original for your files.

Very truly yours,

AARON FERER & SONS

By Morris Ferer.

KELLY PIPE COMPANY

Accepted By: C. E. Ulrich.

MF:L

[Stamped]: Deft's Ex. No. "C". Filed Sep. 11, 1942.

(Record read by reporter.)

Q. By Mr. Paradise: Mr. Clements, can you tell me the entire quantity, that is to say, the quantity expressed in terms of tonnage, of the pipe that was taken off of the property in your operations? A. I cannot.

Q. Can you tell me approximately?

A. I cannot.

Q. Do you have any recollection whatsoever of it?

A. No. We loaded the cars and as far as the book-keeping is concerned that was handled by Mr. Ferer's office.

Q. You supervised that operation up there at the property, did you not?

(Testimony of Thomas Hubbard Clements.)

A. The removal and the loading of the cars and the [446] sales.

Q. And the sales? A. Largely.

Q. And you have no recollection whatsoever of the quantity that was taken off?

A. No. I heard the testimony of Mr. Ferer this morning that there was a total of 1,100 tons but I don't know that of my own knowledge.

Q. If that was true, that it was 1,100 tons, what portion of that was pipe?

A. Oh, I would say 80 per cent.

Q. 80 per cent? A. I would think so.

Q. Then, 80 per cent of 1,100 tons would be the percentage, which would arrive at a quantity of 900 tons of pipe, is that correct? A. I would estimate that.

Q. Do you know how much pipe was sold to the—I will strike that. Is it not correct, Mr. Clements, that the quantity of pipe that was accepted by the Kelly Pipe Company under this contract which is Defendant's Exhibit C was approximately 500 tons of pipe?

A. I wouldn't know.

Mr. Sturzenacker: I object to that. The document speaks for itself.

Mr. Paradise: The document does not show the quantity [447] that was either delivered or sold.

A. I wouldn't know.

Q. You don't know?

A. No. I haven't the record.

(Testimony of Thomas Hubbard Clements.)

Q. Do you know what quantity of pipe was accepted by the Kelly Pipe Company as usable pipe, in good condition?

A. Oh, they got pretty tough on their rejections there for quite a while and we had several cars which came in that we sold to the Imperial Pipe Company and to various other pipe companies.

Q. Do you know what percentage of the pipe was rejected by the Kelly Pipe Company?

A. No; I don't.

Q. Is it not true that approximately half of the pipe was rejected by the Kelly Pipe Company as not being considered by salvage and used pipe companies as No. 1 used pipe?

A. I don't believe they rejected it all for that reason. They rejected a lot because it didn't conform to standard specifications of pipe.

Q. Did they tell you that?

A. They not only told us that but they penalized us, for instance, on certain tonnages of that pipe which didn't conform to standard specifications.

Q. Who told you that the pipe was rejected for that reason, who of the Kelly Pipe Company?

A. The question of why they rejected it wasn't told to [448] us. They went up there and had their man on the job and he said, "We want this and we don't want that."

Q. Who was that man?

A. Mr. Herman Stone and Mr. Phillips.

(Testimony of Thomas Hubbard Clements.)

Q. They told you what?

A. That they wanted this pipe and didn't want that pipe. But we could sell it anyhow and didn't care.

Q. Did they tell you why they rejected it under this contract?

A. Some of it was quite obvious and others it wasn't.

Q. I am asking for the reasons that they stated to you.

A. Some pipe was rejected because they said it was inferior and some of it was rejected because it was what is called bastard sizes.

Q. Wasn't it true that approximately half of the pipe was rejected by the Kelly Pipe Company because it didn't qualify as No. 1 used pipe but only came in the category of Nos. 2 and 3 used pipe?

A. I wouldn't know why they rejected it.

Q. They didn't tell you that? A. Not all of it.

Q. Do you know what those numbers referred to?

A. Yes; sure.

Q. What did they refer to?

A. That pipe which can't be used for No. 1 is classified as No. 2 but, as a matter of fact, in the grading of pipe it [449] depends on the market. I would say a No. 2 grade six months ago is A No. 1 today.

Q. I am talking now about the time this pipe was offered to them for delivery under this contract, Defendant's Exhibit C.

A. They were awfully fussy about it in those days because there was a surplus on the Los Angeles market.

Mr. Paradise: I move that be stricken, if the court please.

(Testimony of Thomas Hubbard Clements.)

Mr. Sturzenacker: I think it is responsive to the question.

The Court: May we have the question read?

(Question read by reporter.)

The Court: The answer may go out.

Mr. Krasne: The first question that the reporter read was, "What did they refer to?" If I remember correctly, the question just ahead of that was "Do you know what the various classifications are?" Starting at the point the reporter started, it sounded as if it meant what did these men of Kelly refer to. I think one question ahead of that will show what he referred to as these various classifications rather than the conversation.

The Court: Do I understand you have just been asking the witness what these designations, classes 1, 2 and 3, referred to at the time of the deal with the Kelly Pipe Company? [450]

Mr. Paradise: That is correct.

The Court: Did you understand the question to mean that?

A. No, sir. I thought it was general.

Q. By Mr. Paradise: I will ask you just what did classifications Nos. 1, 2 and 3, refer to at the time of your contract, that is, at the time of the contract between Aaron Ferer & Sons and the Kelly Pipe Company.

A. It would refer to the best grade, the ordinary grade and the very poor grade, of pipe.

Q. Is it not true that classifications Nos. 2 and 3 of used pipe refer to pipe which is either pitted or corroded or unusable even as line pipe in pipelines?

(Testimony of Thomas Hubbard Clements.)

A. No. 2 pipe used to refer to that which was rough, not particularly pitted, because it didn't take threads so well, but as of today—

Q. No. I am talking about as of the time of your contract.

A. As of that time, the No. 3 grade was practically only used for fence posts and like material.

Q. Is that not also true of No. 2? A. No, sir.

Q. Can No. 2 also be used as line pipe in pipelines?

A. Yes; it is very often used in that way.

Q. Referring to the pipe that was accepted by the Kelly Pipe Company, or the portion of it that was accepted, was that reusable as such in the manner in which you delivered [451] it to them?

A. Sure. If they wanted to put it back in the pipeline, that is a cinch. They would not have to clean it up.

Q. I thought you testified before—

A. I said that they did do it. You asked the question whether it was necessary. I don't say it was necessary.

Q. You mean you could move something through it; that it wasn't clogged? Is that what you mean?

A. It wasn't clogged. We just had oil on the interior and they burned all of that oil so it might be used as a water line or for any other purpose.

Mr. Paradise: I believe that is all.

Redirect Examination.

Q. By Mr. Sturzenacker: When you referred a little while ago in your deposition to recoverable casing,

(Testimony of Thomas Hubbard Clements.)

do you mean that pipe that would come out of the ground or do you mean that pipe that would come out of the ground that could be used again for casing?

A. No; I wasn't referring to that pipe coming out of those wells as casing in the sense it would be used as casing today because that casing was all lapweld casing and they don't use that any more. It is an obsolete type and today it is only usable for pipe in pipelines.

Q. So the casing you were talking about recovering there would be reused and resold as pipe? [452]

A. As pipe.

Q. And that that was not usable as pipe would be sold as what?

A. It could be used for culverts. The very porous, of course, would have to be scrapped for remelting.

Q. At the time you went to Santa Barbara the first time to talk to the Division of Oil and Gas about abandoning these wells, did you receive any instructions from the office up there as what would be necessary to do to abandon these wells?

A. No, sir. They told me the whole thing was up to the manager of that Division; that I would have to come back here again and see him.

Q. When you testified in your deposition and stated that you did not know what requirements the Division up there was going to impose on you, was that because of the fact that you had not received any instructions yet from the Division of Oil and Gas?

A. That is correct. I would have to have specific instructions.

(Testimony of Thomas Hubbard Clements.)

Q. When was the next time you went back to the Division of Oil and Gas? Do you recall?

A. As I recall, it was about the first week in April or the end of April.

Q. Do you know the manager's name there?

A. No, sir.

Q. If I told you it was Mr. Dolman, would that refresh [453] your recollection?

A. Yes; that is correct.

Q. Did you see Mr. Dolman at that time?

A. I didn't see him but this same fellow was there. There was only one man in the office when I was there on both occasions.

Q. Did you go back to the office later?

A. No. Instead of going back the third time, we sent either two or three well-pullers in there to get the specific instructions. In other words, we decided, rather than going back there, we would get the men who were going to do the actual abandonment work to go in there and get the instructions from Dolman direct. So I did not return the third time but sent this man from Long Beach, Owens I believe was his name, to get the specific instructions.

Q. So, as a matter of fact, even at the present time you have never received instructions from the supervisor in that district as to what is going to be necessary to abandon those wells? A. That is correct.

Q. Mr. Paradise read to you your testimony at the taking of the deposition relative to the conversation with Mr. McGahan some time about the 1st of December.

(Testimony of Thomas Hubbard Clements.)

After reading that deposition to you, did that refresh your recollection that you did have a conversation with Mr. McGahan or that you did not have? [454]

A. I probably did. The thing is that I was in McGahan's office about once every week anyhow, checking on other purchases.

Q. All during this time? A. Oh, sure.

Q. And you may or may not have discussed this Casmalia deal with him? A. Yes.

Q. Had Mr. Anderson finished his work when you folks went up to look at the property?

A. No, sir; he hadn't finished cleaning up the property.

Q. And by the time the contract was signed and you went up there to start removing, had Mr. Anderson finished his contract? A. No, sir.

Q. Was he still working? A. Yes, sir.

Q. What was he doing?

A. Burning up rubbish and hauling off various parts of derrick timber and stuff.

Mr. Sturzenacker: That is all.

Recross-Examination.

Q. By Mr. Paradise: One other point, Mr. Clements. I didn't quite understand what you said you were referring to when you referred to recoverable casing. [455]

A. What was the question?

Q. What do you refer to as recoverable casing?

A. Any pipe that would be in those wells after Mr. Anderson had finished and we could take out I term recoverable casing.

(Testimony of Thomas Hubbard Clements.)

Q. Do you mean that recoverable casing is the quantity of the casing that is cemented in a well, which you can recover and take out of the well, or, when you say recoverable casing, do you mean that it was limited only to that portion of the quantity, that you took out, which is salable as usable pipe?

A. Well, I used that terminology in both ways, I think, in my testimony. Where we removed some casing and it just collapsed and fell apart, we certainly wouldn't call it hardly casing where it would go in the scrap bin, and we were pretty well assured that some of it would be in that shape.

Q. Referring to that part of the casing that you recover from an oil well, say half of it was salable as pipe and the other half would be scrap. Now, do you refer to recoverable casing as meaning all of it or only the half being salable?

A. We also referred to it as that portion which we could remove from the well and yet conform to the rules and regulations of the Mining Bureau.

Q. Isn't it true that that is the only meaning, common, ordinary meaning, in the oil industry, that is to say, the portion that can be taken out and still qualify with the [456] requirements of the Division of Oil and Gas, and that it doesn't mean just the portion that you recover which is salable?

A. That is probably true.

Mr. Paradise: That is all

Mr. Sturzenacker: That is all. Mr. Ferer, take the stand again. [457]

MORRIS FERER

recalled.

Direct Examination.

Q. By Mr. Krasne: Mr. Ferer, have you had occasion during the last recess to refresh your recollection concerning the amount of money that you have thus far realized from the sale of materials which you salvaged from the Casmalia deal? A. I have.

Q. And what have been the gross receipts which you have enjoyed as of this time from that property?

Mr. Paradise: If the witness is testifying from records I believe that the defendant should be given the opportunity to examine those records, if the court please, in order to permit proper cross-examination.

The Court: That would seem to be a proper criticism.

Mr. Krasne: I think that Mr. Paradise certainly is entitled to access to those books. I will say, frankly, I didn't have the books brought in and I just asked this witness if he has refreshed his recollection so he can now testify from his own knowledge, after having refreshed his recollection. Counsel is certainly entitled to access to those books.

Mr. Paradise: If it would be acceptable to the court and in order to expedite the matter, I would be glad to meet with Mr. Krasne and we will submit to the court a statement on that matter.

Mr. Krasne: That is quite agreeable. [458]

The Court: Upon examination of the plaintiff's books?

Mr. Paradise: Yes.

(Testimony of Morris Ferer.)

Mr. Krasne: That will be very satisfactory. That being the case, I take it that it is counsel's desire and the court's desire to have me refrain from asking any questions of this witness at this time and we will try to stipulate to it.

Mr. Paradise: Yes.

Mr. Krasne: Very well; that is all.

Mr. Paradise: May I ask Mr. Ferer some questions, if the court please? I realize it is not proper cross-examination but, in view of Mr. Clements' testimony, I would like to ask Mr. Ferer two or three questions about the conversation which he related.

The Court: Very well.

Cross-Examination.

Q. By Mr. Paradise: Mr. Ferer, did you hear Mr. Clements' testimony concerning a conversation which occurred in my office about the exclusion of certain wells?

A. I did.

Q. Did that conversation occur as Mr. Clements stated it?

A. I don't remember in detail at that time that particular type of conversation. The gas line was mentioned but, as I mentioned before, I didn't give it much thought because it [459] was of such small value. And we discussed the question of not having an attorney and that everything goes. I don't remember that particular conversation, though.

Q. Isn't it true that you have formerly testified in this case that you did not know to how many wells the excluded gas line ran? A. That is correct.

(Testimony of Morris Ferer.)

Q. And did you not also testify that you did not think that it would be necessary to keep in operation well No. 36 to which the gas line marked in red on the map runs?

A. I told you that I knew nothing about the mechanics of gas wells or any other kinds of wells.

Q. Did you not also testify in this case that you did not know that the gas going through the gas line to the superintendent's house came from any of the wells on the property?

A. That is correct.

Mr. Paradise: That is all.

Mr. Krasne: Step down, Mr. Ferer. Mr. Goodrich, please take the stand. [460]

MORRIS DAVIS GOODRICH,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name.

A. Morris David Goodrich.

Direct Examination.

Q. By Mr. Krasne: Mr. Goodrich, you are related to Mr. Morris Ferer, are you not?

A. I am.

Q. What is the relationship?

A. Brother-in-law.

Q. Did you have occasion to take a motor trip with Mr. Ferer up to the Casmalia property?

A. I did.

Q. When was that?

A. I believe it was the first Sunday in January, 1941.

Q. And who accompanied you on that trip?

(Testimony of Morris David Goodrich.)

A. Mr. Ferer and Mr. Hyman Ferer, his brother, Mr. White and myself.

Q. Did you meet anyone else there?

A. Yes; we met Mr. Clements there and also—

Q. Where is Mr. Hyman Ferer now, if you know?

A. Mr. Hyman Ferer is in Omaha.

Q. What was the purpose of this trip?

A. Mr. Ferer had negotiated some transaction and he [461] wanted to show it to his brother, as well as myself, while his brother was visiting here; and we all went up to the job.

Q. When you arrived there, did Mr. Ferer show you anything?

A. Yes. Mr. Ferer and his brother, Mr. Hyman Ferer, and myself and Mr. White and Mr. Clements who was there walked considerable distances all over that area and we had seen various boiler houses and various pipe runs and a lot of other debris and other things laying around on the job. And I recall walking up to the superintendent's house at the time. And there was a map taken out. I believe it was the superintendent who had this map. It was a great big, large white map and it showed various runs of pipe and conduits and one thing and another. And I remember Mr. Clements calling to our attention that there were so many—

Mr. Paradise: If the court please, I object to any conversation that this witness may relate. I haven't objected up until now.

Mr. Krasne: I haven't asked him about any conversations, although I will. I think you are quite right.

(Testimony of Morris David Goodrich.)

Q. Did you have any conversations there with Mr. Ferer with respect to the equipment that he was describing as having purchased?

Mr. Paradise: I object to that on the ground of lack of proper foundation and also that it is hearsay.

Mr. Krasne: I think it is probably hearsay to the same [462] extent to which all of the conversations introduced by the defendant are hearsay. I think they are about in the same category. It is to show what Mr. Ferer had in mind, as to what he thought he had in mind.

Mr. Paradise: I believe there is quite a vital difference. Mr. Ferer has already testified who were the interested parties in the transaction as far as the plaintiff is concerned, and he testified as to the members of his partnership and Mr. Goodrich is not a member of the partnership. So any conversation Mr. Ferer had with anyone not connected with the transaction or the negotiations would be completely hearsay and incompetent.

The Court: When did you say this occurred?

A. This was the first Sunday in January.

The Court: It sounds like it was a trip which followed the submission of the bid and prior to the meeting in the office of counsel and the drawing of the formal contract. It might be termed an inspection trip. I will let him answer.

Q. By Mr. Krasne: Will you please relate the conversation? A. Which conversation?

Q. The conversation in which Mr. Ferer discussed with you the items of merchandise or equipment that he had purchased.

(Testimony of Morris David Goodrich.)

A. Can I carry on from where I left off?

Q. Yes. [463]

A. When we got to the superintendent's house and this map was brought out, Mr. Ferer pointed out to me that all that conduit that was visible as well as the conduit that was underneath the pipes at the time was part of this transaction. And at that time, or prior to that, we had passed several wells and it occurred to me that, being a layman—

Q. Just relate your conversation.

A. I had asked Mr. Ferer, "How do you take out that kind of a pipe?" That the oil came up through these vertical pipes and whether or not it could be used as salvage. And Mr. Ferer told me it wasn't a very difficult job; that Mr. Clements had made all arrangements for that job of work and was well equipped to do it.

Q. Did Mr. Ferer say anything about whether or not he had bought that pipe?

A. Definitely Mr. Ferer told me all of that pipe shown on that map, as well as certain runs of pipe that didn't show, because those maps were rather old and they had made considerable additions to those pipe runs. Mr. Clements and the superintendent of that property up there admitted or agreed with him that there are certain runs of pipe that had been added to various other runs that would definitely not show on that print because the print was rather old. And it was my definite belief—

Q. Never mind your belief. Just state the conversation. Was there any further conversation? [464]

(Testimony of Morris David Goodrich.)

A. Not other than that.

Mr. Krasne: You may cross-examine.

Cross-Examination.

Q. By Mr. Paradise: Had you ever seen that map you referred to before? A. Never.

Q. Have you ever seen it since? A. Never.

Q. Would you be able to identify it if you saw it?

A. I have a vague recollection of it.

Q. Do you know whether that is the same map that is attached to this contract?

The Court: You are showing the witness what exhibit?

Mr. Paradise: The map attached to Plaintiff's Exhibit No. 4.

A. I don't believe this was the one. It looks very much like it but it was a much older looking paper.

Q. Did you have any conversations with any Richfield employee or representative?

A. Yes; the formal conversation of introduction to the Richfield superintendent on the job.

Q. That man didn't discuss with you the terms of this transaction, did he? A. No, sir.

Q. Or he didn't discuss with you the items to be sold, [465] did he?

A. There was discussion with Mr. Clements on the pipes.

Q. No. I mean with the Richfield watchman.

A. Is that the superintendent you are referring to?

(Testimony of Morris David Goodrich.)

Q. Yes.

A. There was considerable discussion with him on the pipe runs.

Q. Do you mean the pipelines?

A. The pipelines underneath, that don't show on the map.

Q. Do you mean just the surface pipelines? You are not talking about the wells, are you?

A. The wells and the pipelines were all one as far as I was concerned. That is what they were discussing.

Q. I am not asking you for your opinion. I just wondered if you had any discussion with the watchman there about the oil wells.

A. I did not.

Mr. Paradise: That is all.

Mr. Krasne: That is all. Mr. White, take the stand.
[466]

HARRY WHITE,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name.

A. Harry White.

Direct Examination.

Q. By Mr. Krasne: Mr. White, by whom are you employed?

A. Aaron Ferer & Sons.

Q. How long have you been employed by that firm?

A. For five years.

Q. What is your capacity with that company?

A. Plant manager.

(Testimony of Harry White.)

Q. Did you hear Mr. Goodrich testify concerning a certain trip made to Casmalia the first Sunday of January, 1941? A. I did.

Q. Were you on that trip? A. I was.

Q. Were the same people present that Mr. Goodrich testified were present? A. Yes.

Q. Were you present at a time when there were any discussions or convesations between the persons there with respect to the material or equipment on this Casmalia job? A. I was. [467]

Q. Who was present at the time of any such discussions?

Mr. Paradise: If it will shorten this matter, I will stipulate this witness' testimony will be the same as that of Mr. Goodrich.

Mr. Krasne: So stipulated. Thank you.

Mr. Krasne: If the court please, I think, as this matter has extended and we have found we would not be up against as short a time as I first thought we would be when the matter of procedure arose, the plaintiff is willing to submit the case as it now stands on both the question of the interpretation of the contract, if your Honor still feels that that matter is open and not decided, and upon the question of the defendant's cross-complaint with respect to reformation. In other words, so far as we are concerned, on the subject matters short of the question of damages, this is our case.

The Court: As I understand it, you desire to furnish, by way of stipulation, certain data to be ascertained from an examination of the plaintiff's books.

Mr. Krasne: Yes; except that item, your Honor.

The Court: I would like to have counsel brief the case. Would this be satisfactory, that, since we really have the plaintiff chargeable with the case as made out by the complaint and the defendant, of course, having the laboring oar with reference to the affirmative issues raised in the answer, that briefs be filed simultaneously, with the proviso that [468] you may also file answering briefs to the matters which may be said to be affirmative issues raised by the respective parties? In other words, the plaintiff would be expected to argue the case as it is presented by the complaint and the answer, exclusive of the affirmative issues raised in the answer and the opening brief, and the defense counsel would be expected to discuss the affirmative issues raised in the answer, and then both sides would be entitled to reply, so that we would have a subsequent brief from the plaintiff answering the matters raised in defendant's brief in respect to the affirmative issues of the answer and we would have an answering brief from the defense with respect to the matters raised by the complaint.

Mr. Krasne: That is satisfactory, your Honor.

Mr. Paradise: That is perfectly satisfactory.

The Court: What time is suggested for those briefs?

Mr. Krasne: I think that would depend somewhat upon when we might expect a transcript of these proceedings

from the reporter. The last time we discussed such a procedure, I think we found ourselves preparing our brief before we had the transcript.

The Court: The reporter says he will need ten days.

Mr. Paradise: Would 30 days following the receipt of the transcript be satisfactory?

The Court: Why not assume that the reporter's transcript will be furnished to you by the 21st and that the first [469] briefs will be filed, then, by October 21st and then the answering briefs—what date do you suggest?

Mr. Krasne: Probably two weeks for each of us.

Mr. Paradise: That will be satisfactory.

The Court: That would mean, then, that the answering briefs would be filed by November 4th. I would like an opportunity to examine the briefs to indicate to counsel whether I would like to have you cover any points orally after I examine the briefs or not. For that reason I am suggesting that the matter be put on the calendar for submission, unless you are advised that oral argument is requested, for November 16th at 2:00 p. m.

Mr. Krasne: I should like to make an unusual request. In order to save time and expedite the filing of these briefs, Mr. Paradise has been good enough heretofore to loan me his copies of the depositions. I wonder if there is any reason why Mr. Sturzenacker and I could not borrow the originals from this court until such time as our briefs has been prepared, which will save a great deal of time. We didn't order copies originally and didn't

know that they would ultimately play as important a part in this case as they have. I mean the depositions. If I said something else, I am sorry.

The Court: I see no objection to that.

Mr. Paradise: In order that there may be no misunderstanding, if the court please, Mr. Krasne has just referred [470] to a stipulation concerning the plaintiff's books, that is to say, as to the gross amount of revenue. I had not planned on stipulating to it in the sense that I felt that it was admissible. It was my understanding I would agree as to the amount but I made an objection this morning to the introduction of similar evidence and I think it is still incompetent and immaterial. May our stipulation as to the results of the records be subject to that objection?

Mr. Krasne: Yes, of course, as far as I am concerned. In other words, there are two items, No. 1, the gross receipts from the material thus far sold, and the gross costs to date. In other words, those are the two items to establish whether at this moment there was a profit or loss.

Mr. Paradise: Well, no—

The Court: May I interrupt to say this? When you go into the subject matter of the costs, I am wondering to what extent that evidence would be entitled to much, if any, persuasive character or weight unless the plaintiff's records were to detail the extent to which those costs arose by reason of weather conditions or delays occasioned by other causes. Just to take the gross receipts and the gross costs I am afraid would leave the picture incomplete.

Mr. Krasne: It would be meaningless for me just to prove the gross receipts from superficial records. It might indicate an entirely different picture than I expected the evidence to portray. I am not interested in proving how much [471] money Mr. Ferer has collected from the sale of equipment thus far unless I can at the same time show that it has cost him more than he has collected. I think the court might well take into account as a practical matter certain variables in costs. But we are not in an accounting action. We are trying to find out what the plaintiff had in mind and I think the general picture of just how much he had realized and how much it had cost him to realize that and, therefore, how much he had lost or gained is material.

The Court: Without knowing why it became necessary to expend various sums that were involved in those costs, I am wondering what we could do with the cost figures.

Mr. Krasne: I was going to have Mr. Ferer testify in some detail as to the breakdown. I think we can show that the loss was sustained because there just wasn't very much merchandise.

Mr. Paradise: My objection went further, if the court please, in addition to what has already been mentioned by the court, to the fact that the testimony would be absolutely meaningless in the absence of original estimates and comparing the final result with the original estimates. And Mr. Ferer has testified in his deposition, which is now a part of the record, that it was a guessing contest and, when he guessed as to the quantity, he didn't know if he was 50 per cent right or 200 per cent right or 1 per

cent right and that he made no estimate of costs. In a situation of that sort, [472] I can't see how the final result has any significance whatsoever. He might just have made a bad guess.

Mr. Krasne: I didn't mean to extend this argument but that guessing business can be taken a little bit too literally. Guessing between 3,000 and 6,000 tons is one thing but ending up with 1,100 tons on another theory is an entirely different matter.

The Court: That much, of course, is in the record. I am just wondering will there be evidence from which one may be able to determine to what extent the costs which ultimately were expended compare with the costs which were taken into account when this bid was submitted by plaintiff.

Mr. Krasne: I think, if Mr. Paradise and I were to make an effort to find out from those figures, it could be ascertained how much were normal costs and how much were extraordinary costs.

Mr. Paradise: I can't undertake to do that, if the court please. It is a question of the comparison of the final result with what they originally had in mind.

The Court: I think we ought to do this much, to allow the plaintiff at least to submit his offer subject, of course, to inspection of plaintiff's records by defense counsel and, of course, subject to such objection as defense counsel feels he should interpose; and then I think that, when the offer is submitted, of course, as it will be in writing, that at the same time the defendant ought to indicate [473] what, if any, objections will be interposed and the grounds thereof.

We will take an adjournment at this time. [474]

In the District Court of the United States, for the Southern District of California, Central Division.

Aaron Ferer & Sons, a copartnership, Plaintiff, vs. Richfield Oil Corporation, Defendant. No. 1718-H.

Deposition of David Zeidenfeld, a witness produced, pursuant to the written notice on file herein, on behalf of the defendant in the above-entitled action, now pending in said court, before H. A. Dewing, a Notary Public in and for the County of Los Angeles, State of California, at Room 1221 Richfield Building, 555 South Flower Street, Los Angeles, California, on Friday, February 13, 1942, commencing at the hour of 10 o'clock a. m.

Present:

Philip N. Krasne, Esq.

and

Carl Sturzenacker, Esq.,

For plaintiff.

Robert E. Paradise, Esq.,

For defendant. [1*]

DAVID ZEIDENFELD,

a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Q. By Mr. Paradise: What is your name?

A. David Zeidenfeld.

Q. Will you state your address, Mr. Zeidenfeld?

A. Business or residence?

Q. What is your business address?

A. 10047 South Alameda, Los Angeles.

*Page numbering appearing at foot of page of original deposition.

(Deposition of David Zeidenfeld.)

Q. What is your home address?

A. 1027 South Crescent Heights Boulevard.

Q. During the years 1940 and 1941 were you employed by Aaron Ferer & Sons?

A. I was employed for the whole year of 1940, and a month or two, or a couple of months of 1941.

Q. That is, the first two months of 1941?

A. Yes.

Q. In what capacity were you employed? What were your duties?

A. I was a buyer.

Q. Buyer what?

A. Scrap material; scrap and salvage material.

Q. For Aaron Ferer & Sons?

A. For Aaron Ferer & Sons. [2]

Q. From whom would you make such purchases?

A. From any industrial companies, junk companies, and so forth.

Q. Did you solicit any oil company for the purchase of salvage equipment, on behalf of Aaron Ferer & Sons?

A. Yes, I did.

Q. Did you solicit any purchases of such types of equipment from the Richfield Oil Corporation, during that time?

A. My purchases during that time were solely scrap, with the exception of that material in this case, which I didn't exactly purchase, and as to which I have gone into a few dealings with Mr. McGahan as to what it might contain.

(Deposition of David Zeidenfeld.)

Q. The other purchases that you speak of were of salvage equipment, from Richfield?

A. They were junk material on a tonnage basis.

Q. Did you discuss those matters with Mr. McGahan?

A. Practically always before the purchase was made he had to show the material, before it could be bid on, so we usually discussed the materials that were to be sold, with Mr. McGahan.

Q. What was the first occasion that you discussed with Mr. McGahan the equipment and facilities belonging to the Richfield Oil Corporation at Casmalia?

A. In about September, maybe the middle of September, or toward the end of September, 1940, Mr. McGahan mentioned [3] to me about the Casmalia deal coming up.

Q. That was a conversation with Mr. McGahan, which you are talking about?

A. That was purely a conversation, where we did not go into anything about it, because of the fact I felt that it was not time for the deal to come up yet, so I thought I would wait until such time as it was brought to a head really.

Q. I am asking solely concerning the conversations, Mr. Zeidenfeld, rather than what you felt at the time. This conversation that you mentioned, where did that take place?

A. At Richville.

Q. At Mr. McGahan's office?

A. That's right.

Q. Do you recall what Mr. McGahan said at that time?

(Deposition of David Zeidenfeld.)

A. "I think we are going to have a pretty good size deal to work on. We are just working on the records right now, and it isn't exactly ready yet, but I will let you know when it comes up."

Q. Did Mr. McGahan state what types of equipment or materials were to be sold?

A. All I remember at that time that Mr. McGahan mentioned was an oil refinery, either to be sold as a unit, or to be sold in individual lots, by the company.

Q. Did he mention the nature of the types of equipment to be sold? [4]

A. At that time I think that was not. I don't know whether it was clear in his mind yet whether or not Richfield was going to keep a lot of its material, or whether they were going to sell it as a whole. I didn't exactly understand what it was all about until a couple of months later.

Q. At that conversation did Mr. McGahan state what the types of equipment were that were to be sold, whether they were to be sold as a unit or piecemeal?

A. That I don't remember, because it was something that wasn't even checked over between he and myself. I just waited a couple of months after, when the deal started to come to a head.

Q. Did Mr. McGahan state the equipment to be sold was to be surface equipment?

A. At that time, if I remember right, there was supposed to be a lot of various types of refinery and producing equipment. As to what they consisted of, there might have been a few details, but I did not pay any attention to that as yet.

(Deposition of David Zeidenfeld.)

Q. You don't recall whether or not he stated that the equipment to be sold was surface equipment?

A. Not at that time. There may have been some mention a little later on of something like that, but I don't recall exactly.

Q. Do you recall what was said in that regard?

A. Are you referring to the first conversation on this [5] deal, or are you referring to a later conversation?

Q. I am now referring to the first conversation that you had with Mr. McGahan concerning the proposed sale at Casmalia.

A. There wasn't really much said. I don't think we discussed the thing over two or three minutes, and there couldn't have been very much said at that time.

Q. Do you recall anything more specific as to what was said at that conversation than you have already stated?

A. That is about all I can give definitely. To give you a little clearer picture about this, during that time I was not discussing this with Aaron Ferer & Sons. They had purchased some scrap iron, and items of that nature, in the yard, and I happened to be there with them at the time this was just casually brought up.

Q. At the conclusion of your conversation did you make any report to Aaron Ferer & Sons concerning the proposed sale of the Casmalia equipment that Mr. McGahan had mentioned to you?

A. To get a clear picture of this, I used to come into the office of Mr. Ferer every day, and I would casually remark "There is a deal coming up here" or "There is

(Deposition of David Zeidenfeld.)

a deal coming up there", but there was quite a bit of that, and I just dropped quite a bit of these things until the deal was ready to be figured on.

Q. In your activities on behalf of Aaron Ferer & Sons [6] were you interested in large deals or small deals—that is to say, transactions involving large quantities of equipment, or small quantities?

A. Most of the deals were in small quantities, because there weren't any too many large quantities of it. We were interested in any deal, of whatever size, that would come up.

Q. Were you more interested in deals involving large quantities of equipment than you were in deals involving small quantities?

A. Naturally I was more interested in large quantities of equipment than small.

Q. Did it indicate to you that the particular sale Mr. McGahan mentioned to you involved a substantial quantity of equipment? A. Yes, it did.

Q. Did you report that particular proposed sale to Mr. Ferer?

Mr. Krasne: I object to the question as assuming facts not in evidence. At that time there wasn't a proposed sale, if I understand the witness correctly; there was just a casual conversation. In other words, Mr. McGahan said maybe the deal would be coming up, in the first discussion.

Q. By Mr. Paradise: Did Mr. McGahan inquire of you at this first conversation we have been discussing, whether Aaron Ferer & Sons would be interested in making a bid on that purchase? [7]

(Deposition of David Zeidenfeld.)

A. I think he did. I told him "I think they would be interested."

Q. Did you report to Mr. Ferer any of that conversation which you had with Mr. McGahan?

A. The only thing, I might have reported to Mr. Ferer, inasmuch, as I have mentioned before, there were so many deals coming up, small and large—the small ones actually took place, whereas the large ones went by the wayside—but I don't think he took much notice of this, if I did bring it up to him.

Q. Do you recall whether or not you did bring it up to him?

A. During the evening I used to come around there, and there would be salesmen in there. It didn't mean anything, and I just dropped it then.

Q. Did you mention to Mr. Ferer anything about the conversation you had with Mr. McGahan?

A. I might have mentioned this: That Richfield has got a fairly good sized deal coming up in the future, but I don't think they are ready for it yet. Whether I mentioned just the word "Casmalia" at that time, I don't remember.

Q. Did Mr. Ferer inquire of you as to the nature of the deal?

A. He might have asked what the deal consisted of, and I told him it was just a complete refinery.

Q. Did you mention anything to Mr. Ferer at that time [8] about the quantities involved?

(Deposition of David Zeidenfeld.)

A. There was no mention of the quantity, because I did not know anything about the quantity, whether it was a small refinery or a large refinery. All I was told was that there was a lot of equipment up there, and I just passed it off until such time as he would be ready to put it up for sale, because Richfield in the past, whenever they would bring up anything for sale, or mention was made about dealings, I usually waited until the thing came to a head, because it takes so long before any such dealings actually take place.

Q. But in this case did I understand you to say that you did mention this transaction to Mr. Ferer?

A. I mentioned practically every transaction to him, but most of the transactions just drop by the wayside until they are ready to come up for sale. Whether Mr. Ferer remembers that or not, I couldn't say, but I do remember saying that there was a Richfield deal coming up, a fairly good sized deal, but nothing about Casmalia at that time.

Q. Did you describe to him the location?

A. So far as the location, I think I inquired of Mr. McGahan the location. I know it was around Santa Maria.

Q. Did you mention that to Mr. Ferer?

Mr. Krasne: I object to that as having been asked and answered. The witness testified, in response to counsel's question, if he said anything at all about the deal, all he [9] said was that there was going to be a big deal coming up soon.

The Witness: Repeat the question.

(Question read by the reporter.)

(Deposition of David Zeidenfeld.)

A. I might have, but inasmuch as it is close to a year ago, I don't recall the exact wording of my answer to him.

Q. By Mr. Paradise: Do you recall anything more specific about your conversation with Mr. McGahan than you have mentioned?

A. At the time the conversation actually took place, I don't think it took over 30 seconds to say what I have just told you in about five or ten minutes. It was just dropped by the wayside until a future date.

Q. What was the occasion of your next discussion with Mr. McGahan concerning the proposed sale of equipment at Casmalia?

A. If I may ask this—did you ask when?

Q. Yes. A. About how long after that?

Q. Yes.

A. I believe it was in the early part of November, No, exactly November 28th I saw Mr. McGahan regarding Casmalia.

Q. Where did that conversation take place?

A. At the same office where the first conversation took place, at Richville. [10]

Q. Was there anyone else present besides you and Mr. McGahan at that conversation?

A. No, Mr. McGahan and I were alone.

Q. Did you visit Mr. McGahan's office, or did he ask you to come to the office?

A. I think I was there on another deal of some scrap Aaron Ferer & Sons had purchased from them, and I happened to be in the office discussing that deal, and this was just brought to my attention.

(Deposition of David Zeidenfeld.)

Q. In so far as that conversation concerned the sale of Richfield equipment from Richfield's Casmalia property, what was said between you and Mr. McGahan?

A. I think at that time Mr. McGahan was compiling a sort of an estimate as to what he might have up there for sale.

Q. Do you mean he was compiling it while you were in his office, or that he had already compiled it?

A. Whether he had completed the compilation—is that the correct pronunciation of it—at that time, or whether he was still compiling it during that time, I don't recall, but I do remember that a little later on, about the 28th of the month—I think it was one of the last times I had seen him on that deal, I think at that time he had got most of the information, although during the entire stages he was giving me a little information at a time, as he was getting it out of the place. [11]

Q. As I understand it, you had other discussions with Mr. McGahan about this transaction, subsequent to the first conversation, which I think you said was September, 1940, and prior to this particular conversation on November 28th?

A. No, I think there might have been some casual remarks made about that, but on November 28th, in my date book, I do have written, "Richfield, Casmalia." That is all I have noted, so I must have seen him on that date.

Q. What do you recall about this conversation that took place between those two dates, that is to say, between your September 1st date, and November 28th? Were those conversations that took place in Mr. McGahan's office?

(Deposition of David Zeidenfeld.)

A. They were conversations on scrap dealings that we were having. It took a month or two to clean up sometimes, so I was around there maybe once a week or twice a week, and I wouldn't find him in, but when I did find him in I don't remember bringing up anything about Casmalia; but he might have mentioned "I think I will have some more information for you in a few days."

Q. Between the conversations which took place between those two dates did Mr. McGahan give you any specific information about the nature or type of equipment to be sold at Casmalia?

A. Not any more than I told you in answer to your prior question.

Q. He never mentioned that he had more information? [12]

A. If I remember correctly, I believe Mr. McGahan was taking down information from that plant; every trip he went up there he found another lot of equipment to be listed, and he just added to his estimate what he thought might be there. About the first couple of weeks of December I think he had it completed, if I remember right.

Q. Before this conversation took place on November 28th did Mr. McGahan show you any of those estimates, or give you any information that he said he had obtained during that time?

A. He might have showed them to me, but I really did not take any notice of the things.

Q. Referring again to this conversation on November 28th, was there any discussion on that occasion of the nature of the equipment to be sold?

(Deposition of David Zeidenfeld.)

A. That's the date written in my date book to see Mr. McGahan; whether I saw him on the 28th, or saw him a few days after that, I don't remember, but I have in the date book, written down, November 28th and December 23rd. Those are the only dates I have got written down as to when I had seen him. Whether I had dropped in between those dates, I don't recall exactly as to the dates, because it is a little hazy so far as I am concerned.

Q. Then you don't recall whether this conversation you mentioned actually took place on November 28th?

A. It might have been a day or two days after that, or [13] on that date.

Q. In that conversation was anything said by either you or Mr. McGahan as to the nature of the equipment to be sold from from the Casmalia property?

A. The nature of the equipment that was mentioned, if I remember correctly, was a lot of pipe that they had up there. There was mention of pipe lines. There was no specific tonnage at that time mentioned yet. I think it was maybe a few days after that when he had his compilation and estimate just about ready to be shown. When the actual bid started, I don't actually recall it, but I do know it was in the month of December that bids were to be opened, so he might have had it completed at that time.

Q. I want your recollection as to what was discussed at that meeting we are talking of, which, as I understand, occurred either November 28th—

A. —or a few days afterwards.

(Deposition of David Zeidenfeld.)

Q. Will you just state what the conversations were about; what was said?

A. What was said at that time, I believe that he mentioned that the refinery has a lot of pipe lines and other items up there to be sold. There might have been a few pumps maybe which Richfield may want to keep, or whether they were going to sell them. Whether that was a few days before, I don't remember. At that time I think he mentioned there was a lot of pipe up there, a lot of lines—the word “lines”; I don't think the words “surface equipment” was ever used, [14] but the average fellow—

Mr. Krasne: Just a moment. Will you repeat what was said; not conclusions?

A. All the conversation, really what he said—

Mr. Krasne: One minute. To make my point clear, counsel has asked you to give a conversation between yourself and Mr. McGahan on this subject matter. I ask you please to limit yourself to that conversation.

A. Let's see. I should like to go back a little bit, to make it a little straighter. Read that over again.

(Answer read by the reporter.)

Mr. Krasne: Excuse me once more, so this witness can understand what he is expected to do in response to a question of that kind: If you can remember what was said by Mr. McGahan and what was said by you, that is what Mr. Paradise has asked you for. If, in fact, you don't remember, then you are perfectly free to say so, rather than conjecture as to what may have been said.

(Deposition of David Zeidenfeld.)

A. Is it all right if we just strike out after the word "pipe lines" or something like that, so far as I am concerned, and then I will go on from there?

Mr. Paradise: The reporter is taking down your entire testimony, Mr. Zeidenfeld. If you want to make any correction as to what you have already said, that is perfectly satisfactory. I want your recollection of the conversations that took place in Mr. McGahan's office at that time.

A. I believe I asked Mr. McGahan for the amount of [15] tonnage that he might have in this complete job, in figuring the business of a deal of this nature, and I believe at that time he mentioned that we have approximately 1,500 tons of material there, which is purely an estimate, which might contain 900 tons of pipe and 600 tons of steel. And I asked him what the pipe consisted of. He said the steel consisted mostly of some loading racks and the refinery proper, if I remember correctly. As far as what the pipe consisted of, there wasn't too much talk about that, inasmuch as to whether or not it was pipe in wells or pipe in lines; it was just so many tons of pipe.

Q. I think you are anticipating the question, Mr. Zeidenfeld. Was there any mention whatsoever of pipe in wells?

A. I don't recall any mention of pipe in wells, between Mr. McGahan and myself.

Q. Do you recall any mention of casing, the casing in oil wells?

A. That I don't believe I heard mention of there at that time. The word "pipe" itself, to an average fellow

(Deposition of David Zeidenfeld.)

in the junk business, whether it is casing or just a line of pipe or other pipe is designated, when a lot like that is bought up, it is so many tons of pipe.

Mr. Paradise: I move to strike the answer as not responsive to the question, and a mere conclusion of the witness.

Q. At that time did you know there were any oil wells [16] on the property?

A. I did not know what was on the property. I had never been there. I did not personally know there were any oil wells on the property at all.

Q. You did not know? A. No.

Q. You did not have any oil wells in mind at all at this conversation with Mr. McGahan, isn't that correct?

A. I don't believe I did.

Q. Had you seen the property?

A. I had never been up.

Q. Did Mr. McGahan state there were any wells on the property?

A. He might have, but I did not take any notice of it.

Q. Do you know whether he did or not?

A. I don't remember if he did.

Q. But you did not know there were any wells on the property?

A. No. I knew there were some wells, but whether or not they were on this property, I don't recall. At that time he says, "We're going to sell a lot of equipment on the property." Whether he mentioned all the equipment on the property, I don't remember. That is hazy.

(Deposition of David Zeidenfeld.)

Q. Did Mr. McGahan state at that conversation that the equipment to be sold was surface equipment?

A. That I don't recall. [17]

Q. I believe you stated, in answer to an earlier question, that at your first conversation with Mr. McGahan, when he first mentioned that certain equipment would be sold from Casmalia, that you do not recall whether he used the phrase "surface equipment" at that time, but you do recall that he used it at a subsequent conversation?

Mr. Krasne: Just a moment. Counsel is putting words into the mouth of the witness. The witness did not say that Mr. McGahan had used the words "surface equipment" at a later time.

Mr. Paradise: I believe the record will show to the contrary, Mr. Krasne. But I want the witness to state whether Mr. McGahan used the phrase "surface equipment" at the first conversation that you had with him, or at a subsequent occasion, and if so, on what occasion.

A. I don't remember the words "surface equipment" being used. I remember "pipe lines" being used, and I remember "a lot of pipe" being used. Inasmuch as I did not know anything about the property in general, pipe to me just meant so many tons of material.

Q. Did you understand, in your conversation with Mr. McGahan, that the equipment to be sold was any other than surface equipment?

A. Truthfully, inasmuch as I did not know there were any oil wells, I believed they were pipe in lines.

(Deposition of David Zeidenfeld.)

Q. You stated Mr. McGahan mentioned there was pipe [18] and pipe lines. Did you mean by that that Mr. McGahan mentioned pipe in addition to pipe lines, or that the property he was referring to was pipe lines?

A. During the conversation there were so many tons of pipe mentioned, and maybe he mentioned pipe lines. The word "pipe" in general struck me, inasmuch as I was interested in any type of material.

Q. Did you understand, when he used the word "pipe", or he used the word "property", he was referring to anything other than pipe line?

A. My assumption was, practically 99 per cent of all people figure that pipe is usually pipe lying either under the ground or on the ground on a horizontal plane.

Q. By that do you mean pipe line, or something else?

A. Usually pipe lines.

Q. Was there any mention of other than pipe lines in this conversation?

A. So far as I recall, there was no mention other than pipe lines; just pipe connecting two different—

Mr. Krasne: Just a moment. Just what was said; not the conclusion you draw.

Mr. Paradise: Just a moment. I would like to have the witness answer the question.

The Witness: Will you re-read it?

(Question read by the reporter.)

A. Pipe connecting two different points. [19]

(Deposition of David Zeidenfeld.)

Mr. Paradise: I would like to have the last three questions and answers read, please, Mr. Dewing.

(Record read by the reporter.)

Q. By Mr. Paradise: Did you understand at that conversation that either you or Mr. McGahan were discussing anything other than surface equipment?

A. I, in my own mind, thought that surface equipment was what this material consisted of.

Q. Did you gather that from anything that Mr. McGahan said?

A. Inasmuch as he said there was pipe, I usually refer to pipe as pipe lying on the ground, because I am not in a position to figure any other pipe. I never did figure that before.

Q. Did you come to the conclusion that this was surface equipment from anything else that Mr. McGahan said?

A. Well, there was just generally what I believed it was, in a few remarks that he might have mentioned at that time; he might have mentioned a line or so, once in a while, here and there, and so forth. Specifically, I was only interested in how many tons of pipe there were there; how many tons of steel there were there.

Q. Did Mr. McGahan state that the tonnage that you mention, of approximately 900 tons, consisted of pipe lines?

A. Well, as I recall, it was just pipe. He might have mentioned pipe lines, but I don't recall the exact [20] word, but there was just 900 tons of pipe.

(Deposition of David Zeidenfeld.)

Q. Did he describe the length of those pipe lines, or the sizes of them?

A. He did mention a few times that there were a few sizes, but I did not take any heed as to the size, because all pipe is so much a ton, whether it is small or large, depending on how much labor there is in taking them up as to what they might be worth.

Q. Did Mr. McGahan show you any documents at that time?

A. He asked me to come around the desk, a few times, and showed me specific instances of this and specific instances of something else, but all through this deal I, in my own mind, was figuring actual tonnage. That was the only thing I was trying to get out of it—how many tons of which item was for sale.

Q. Mr. Zeidenfeld, I will show you ten sheets of penciled memoranda, and ask you if those are the memoranda which Mr. McGahan showed you at that time?

A. What is the last question, please?

(Question read by the reporter.)

A. Do you want that question answered yes or no, or do you want me to explain?

Q. You can answer the question; then you are entitled to give any explanation you like.

A. These are the sheets shown me, but I don't recall all of them. I know he had all of them in his book; or was [21] supposed to have had them all; and I remember his showing me some instances of this "1500 tons". I remember that "Total Estimate", and I specifically re-

(Deposition of David Zeidenfeld.)

member he showed me a lot of pumps on one of these pages, and as far as the pipe, what he has here marked "Footage & Weights are approx." and "Production" and "Refinery", I did not take any notice as to whether the pipe was in lines or casing, but my assumption was that this pipe was in pipe lines, but I don't recall the exact footage; that did not enter into it. I was primarily interested in this 1500 estimate. I don't recall taking any figures down on this either.

Q. When you said you did not remember whether this pipe was in lines or in casing, did you have casing in mind at that time?

A. To tell you the truth, I did not know the difference between line pipe and casing, at that time.

Q. When you talk about casing now, you are talking about casing in oil wells, are you not?

A. Just a few days ago I was told that casing was casing in oil wells. I have heard casing used many times. I am not exactly an oil man, and I never knew a lot of terms, and I can't determine whether it is pipe that goes up and down, or goes straight across.

Q. I think you are making a lot of assumptions, Mr. Zeidenfeld. I believe you testified that you did not know there were any oil wells on the property? [22]

A. That's right.

Q. Did you mean by your answer—

A. I am not referring in that answer to casing—just casing in wells, or whether it is casing in lines, or anything else. I just happened to use that term. Maybe I was mistaken; if you want to put it that way.

(Deposition of David Zeidenfeld.)

Q. When you said you were examining a particular page upon which footages and sizes of pipe were shown, that you did not know whether that was casing or pipe lines, did you mean that you had that question in your mind at the time you were examining this document?

Mr. Krasne: Just a minute. I object to the question upon the ground it assumes facts not in evidence. This witness has not testified that he examined these records. His testimony was that these sheets, which counsel has in his hand, might have been sheets, probably were the sheets, that Mr. McGahan had; and Mr. McGahan showed them to him. He did not testify that he had made any examination of them. In fact, he testified that the thing he was interested in was the total tonnage. The estimate showed approximately 1500 tons of materials.

Mr. Paradise: I think, Mr. Krasne, you are referring to a different answer of the witness. I will ask that the record be read. The witness answered the question concerning his examination of the penciled memoranda which were referred to. [23]

Mr. Krasne: If you want to do that, all right, or if you want to get the record straight, just ask the witness whether he did examine these, and to what extent; then we will know.

Q. By Mr. Paradise: When you answered the question, Mr. Zeidenfeld, and stated that when you were discussing the footage of the pipe that was mentioned, and stated that you did not take any notice whether the pipe was in line or in casing, you were not considering any oil wells upon the property at that time, were you?

(Deposition of David Zeidenfeld.)

A. I did not know there were any oil wells upon the property.

Mr. Paradise: I ask that the reporter mark as Defendant's Exhibit 1 for identification, each of the ten sheets which I have shown the witness. I suppose it will be satisfactory to mark them all as Exhibit 1, in the aggregate?

Mr. Krasne: Yes; mark them for identification only.

Q. By Mr. Paradise: Did Mr. McGahan show you all of these sheets?

A. He opened his book, and he came to a page where he had a certain item, and he might have turned over a few more, he showed me certain things that he thought I might be more interested in.

Q. Would you state which particular ones of these sheets, which are marked consecutively in the lower right corner—which ones of those Mr. McGahan did show you? [24]

A. This first sheet I saw, because I saw this "1500 tons" here.

Q. That is sheet No. 1?

A. Sheet No. 1. Whether there was a circle around this "1500 tons" at that time, I don't recall, or whether it was since put on. I remember he had another sheet in here with the pumps—can I look at this? Mr. McGahan then kept turning these sheets. He might have pointed out something that did not make any difference; he said there was one item and another.

(Deposition of David Zeidenfeld.)

Q. Do you recognize these sheets as the ones you looked at on that occasion? A. I recognize the sheets from the top sheet, and from these other sheets. These other sheets were just in between there, in that same handwriting. As long as it pertains to the same subject, I presume I must have glanced at these as he turned them over, sheet by sheet.

Mr. Krasne: So that the record will be clear, counsel is asking whether you can swear under oath today that these sheets which you have in your hand are the actual sheets that you saw in Mr. McGahan's office on that occasion; that you are positive that they are; not a surmise or conjecture.

A. I wouldn't want to swear under oath that these are the exact sheets. I don't know whether those are the exact ones. They look like the sheets I have seen, but I don't remember. Take this page with the word "Cas-malia" [25] on it and "Production" and "Refinery", concerning pipe—

Q. By Mr. Paradise: What is the page number of that, marked in the lower right hand corner?

A. No. 7.

Q. Do you recall that you examined that sheet?

A. I did not examine it.

Q. Did he show it to you?

A. He showed me "Here is a lot of pipe here", and so forth, and things like that. I asked him, "How many tons have you got in the whole lot?" He said, "There should be about 900 tons of pipe, but I did not take any

(Deposition of David Zeidenfeld.)

estimates of the footages, or anything like that.” I don’t remember about the 900 tons, whether it just covered this sheet, or whether that and other accompanying lines he had not yet figured. He figured there would be approximately that pipe on the property.

Q. Can you identify sheet No. 1 as having seen that?

A. I can identify the 1500 tons, but I don’t remember any of the other items. I did not go through these sheets; I was just looking for something as to specific tonnage—what was in the whole thing. There is one other sheet I think I could identify, if I could find it, concerning pumps, if it is still here. It is sheet No. 8. I wouldn’t want to swear under oath that I had seen this sheet, but there were a lot of pumps listed on this complete page of pumps. I believe at that time he told me the company is [26] selling a few off, a little at a time, to some buyers that wanted them, or they might want to keep a few of these, but this list is practically a list of all to be sold. Whether it will be sold or not, to go ahead and figure on it anyway.

Q. In what form were those sheets kept?

A. They were kept in a little loose leaf binder. They were not in the loose form they are in now.

Q. Do you recall that that was the size of the sheets you examined? A. I believe that was.

Q. Is it your best recollection that these are the sheets that you examined?

A. Like I said, I wouldn’t swear under oath that they were, but they look like them.

(Deposition of David Zeidenfeld.)

Q. Did Mr. McGahan give you his book, or make it available to you, so that you could make your own examination of them?

A. No, I was sitting at one end of the desk, and he was at the opposite end. I walked around to the other end of the desk, and he showed me a few instances concerning certain things over there. Some penetrated, and some didn't. So far as my penetration went it was to the effect of the tonnage on the property.

Mr. Paradise: I offer these ten sheets as Defendant's Exhibit No. 1. [27]

[Defendant's Exhibit 1, appearing in the record at this point, is identical to Defendant's Exhibit B, heretofore printed at pages 387 to 397, and is therefore omitted.]

Mr. Krasne: I object on the ground that no proper foundation has been laid; incompetent, irrelevant and immaterial. For the purpose of making my objection clearer, I would like to ask the witness a few questions on voir dire with respect thereto.

Q. By Mr. Krasne: If I understand you correctly, Mr. Zeidenfeld, when you were at Mr. McGahan's office, some time the latter part of November, I believe you said Mr. McGahan had a loose leaf book that had some documents in it?

A. He kept all of his records in a book. I believe these were in the same book as where he keeps his records of all his travelings around different parts of the country, and estimates on other jobs he has in mind, and also store records, probably.

(Deposition of David Zeidenfeld.)

Q. How much time did you spend looking at the sheets in the book which Mr. McGahan directed your attention to? A. I might have been there all told maybe 15 or 20 minutes at a time, just discussing, not primarily one deal, but there might have been two or three other things coming up, but actually I did not examine them the way an engineer would examine the sheet, and look all the way through them.

Q. Counsel has shown you this morning, something over a year after you were first shown this book, ten pages with considerable writing and compilations in small figures, is that right? A. That's right. [28]

Q. Would you say that on the occasion that Mr. McGahan showed you the book that you read all of the items on the pages that he showed you?

A. I did not.

Q. As a matter of fact you did not then, and you do not now know what those pages said, is that correct?

A. If I had to remember it from memory, I couldn't give you a word for word picture of any of the pages.

Q. At the time you looked at the book you did not read those pages, did you, except for the total estimates?

Mr. Paradise: I object to the question as contrary to the witness' statement. It assumes facts not in evidence.

Mr. Krasne: This is a question on voir dire. I want to find out whether the sheets should go in evidence.

The Witness: Do you want that in just the form of a yes or no answer, or an explanation?

(Deposition of David Zeidenfeld.)

Mr. Krasne: You can explain your answer, Mr. Zeidenfeld. Answer yes or no, and then you can explain.

A. Specifically I looked at it in the form of an estimate in total tonnage, but Mr. McGahan, if I remember correctly, tried to explain to me certain information pertaining to what might be up there—pertaining to pumps, and what might be up there pertaining to those. I kept repeating over and over to him “How many tons are there?” He tried to define to me certain different types of pumps, certain different types of other items on the lease, and I [29] told him, “I don’t understand a lot of stuff you are talking about.” We used to joke around quite a bit about it. He showed me the pages. They look exactly the same. I did not see all of them; I saw just one or two or three of them. He kept turning the pages to show me. The main thing I was interested in, if I remember right, on one of those pages he said “We haven’t got the full 900 tons of pipe listed on this page,” but I think he had 600 and some tons of pipe on one. That is something that stands out a little clearer, but he says “There will be roughly I think 1500 tons, of which 900 tons is pipe.”

Q. I direct your attention to Defendant’s Exhibit for identification No. 1, these ten sheets. Will you swear under oath today that the writing on all of those ten pages is the writing that was on the pages which you looked at in Mr. McGahan’s office?

A. I wouldn’t swear to that, because there are too many figures for me to remember so long a time back, but I do recognize that it has Mr. McGahan’s handwriting or printing.

(Deposition of David Zeidenfeld.)

Q. You don't know what was on the first page that Mr. McGahan showed you in November, 1940, do you?

A. I know that 1500 tons.

Q. That's the only item you have any recollection about that was on there?

A. That's about it. He did go through these a little [30] bit, so far as the pipe was concerned.

Mr. Paradise: When you say "this", Mr. Zeidenfeld, read the portion you are referring to, because it does not appear in the record as to what you are referring to when you merely say "this."

A. He showed me this main sheet.

Mr. Paradise: Which sheet do you refer to?

A. Page No. 1 of Exhibit 1, if you will call it that.

Mr. Paradise: In which the items—

A. —are listed as Boilers, Pumps, Pipe, Valves, Fittings, Engines, and Motors, and he has got these broken down to the different tonnages for each lot, and he has there 920 tons of pipe—roughly 900 tons.

Mr. Paradise: Do you recall that he showed you the portion that you are now reading?

A. I recall seeing that, roughly, and, you know, just certain figures, but I cannot exactly—for instance, you have here 8 tons of fittings, engines and motors. I wouldn't swear under oath I saw it, but I imagine it was all there, because of the fact that it is still page 1, and it doesn't look like anything has been tampered with on the

(Deposition of David Zeidenfeld.)

page. But I do remember specifically 1500 tons, and generally speaking, 900 tons of pipe, so I would assume 600 tons was material other than that.

Q. By Mr. Krasne: On page 2 of Defendant's Exhibit 1 for identification, did you read over any page in Mr. [31] McGahan's book that had similar subject matter, do you know?

A. I think the pages were just turned. So far as another page, or the next one was concerned, for instance, mention might have been made "We have this item" and the page was turned, and "We have this item" and the page was turned, and so forth. I couldn't swear under oath that I inspected those pages.

Q. In other words, if I understand you correctly, you looked at page 1 because it contained some total estimates that you remember?

A. That's right.

Q. With respect to the remaining pages, Mr. McGahan just thumbed through them while you were at his desk?

A. That is right.

Q. So you would not want to say under oath that these very pages that have been offered in evidence are exactly the pages that you saw on that occasion?

A. That's right.

Mr. Paradise: I object to Mr. Krasne prompting the witness by his leading and suggestive questions.

Mr. Krasne: I renew my objection. I will let the Court rule on it.

(Deposition of David Zeidenfeld.)

Q. By Mr. Paradise: Do you recall, Mr. Zeidenfeld, that all of these ten pages were thumbed over in your presence by Mr. McGahan, as you watched him, whether or not you recall the specific items which occur on each page? [32]

A. No, I don't remember that at all; I don't remember whether there were three pages or 15 pages.

Q. What is your best recollection?

A. My best recollection is that he just thumbed through at least three or four or five of them, that I can recall. There might have been ten, but it is so long ago—there might have been 15 for all I know, but I wouldn't want to swear under oath there were ten or less than ten.

Q. Is it your best recollection that pages 1 to 10, which I have shown to you, are the pages shown to you by Mr. McGahan on that occasion?

A. I wouldn't want to say they were all shown to me. I can only say, inasmuch as they referred to the same subject he might have thumbed through all of them, but I took no heed of how many pages were there.

Q. State which particular pages you do recognize.

Mr. Krasne: If he does recognize these as the pages.

A. As far as the pages are concerned, I wouldn't swear under oath that they are the same figures, but the page looks familiar to me, inasmuch as the figures on the page pertaining to the upper half only.

(Deposition of David Zeidenfeld.)

Q. By Mr. Paradise: What do you mean?

A. Pertaining to the specific tonnage, estimates of tonnages on boilers, pumps, and so forth.

Q. Do you recall seeing that?

A. I recall seeing it, but I don't remember the exact [33] tonnage that I saw. The main thing that struck me was 1500 tons total, of which 900 tons were pipe.

Q. What other pages do you recall having seen?

A. I recall seeing page 3, with the yellow markings on there.

Q. You don't recall at this time what specific figures were on the page that you examined at that time?

A. No, I don't recall any figures on that page. There was nothing definitely brought out to me. The pages were turned so fast: "Here we have something." After all, you are only interested in so many tons and then the page was turned.

Q. Do you recall anything on page 4?

A. So far as page 4, I wouldn't say that I recall it.

Q. Will you go through the balance of the pages, and state your recollection of the extent to which you examined the pages at that time?

A. Page No. 1 is the only one thus far where I examined with any closeness at all. The pages were kept turning until page 7, where he had a list of production and refinery pipe at Casmalia. I did not notice whether or not this pipe was anything else other than pipe just on the whole property, or whether or not it was just so many

(Deposition of David Zeidenfeld.)

tons of property on the lease. I do recall that Mr. McGahan gave me information about certain things, and I said "How many tons does the whole darn thing weigh?" [34]

Q. Do you recall the page?

A. It looks like one of the pages, but I don't recall the exact figures of footages.

Q. The balance of the pages—

A. If you will examine page No. 7 you will find that he has a heading of "Pipe" on the page.

Q. Do you recall any other pages, pages 8, 9 and 10?

A. Page No. 8, consisting of pumps, was shown me, where a few items were sold; a few items are to be retained by the company, but if I recall correctly, Mr. McGahan told me at that time, "After all, so far as the tonnage is concerned, that wouldn't make a lot of difference anyway, because they don't weigh a hell of a lot." Shall we change that to "a heck of a lot"?

Q. Do you recall the other pages? [35]

A. Pages 9 and 10 I don't recall anything about. I know there was some talk of tanks, but I don't recall anything about which tanks were to be retained, and which tanks were not to be retained, although I remember Mr. McGahan trying to give me that information. I told him I was not going to pay the money on the deal, and I would rather somebody else would look into that when they got up there.

(Deposition of David Zeidenfeld.)

Q. Is it your general recollection that these appear to be the pages which you saw in Mr. McGahan's office on that date?

A. Generally they look like the pages as I saw them.

Mr. Krasne: Is counsel referring to the two or three pages which the witness says he did see, or is he talking about all of these pages?

Mr. Paradise: I am referring to all 10 pages.

The Witness: I wouldn't want to guarantee that I saw all 10 pages, or whether they were thumbed through so fast, or whether I actually saw three or four of those pages.

Q. Is it your recollection that these were the pages that Mr. McGahan showed you on that date, regardless of how fast certain of the pages were thumbed through?

A. They appear to be the pages he showed me, but as to the number of pages I had seen I would not want to swear to that.

Q. You were particularly interested in the over-all tonnage, is that correct? [36]

A. That is exactly it.

Q. What was the over-all tonnage which Mr. McGahan stated?

A. Roughly, 1,500 tons of both steel and pipe.

Q. Did you ask him to break down that estimate?

A. That's about all I was interested in; how many tons of steel and how many tons of pipe were there.

(Deposition of David Zeidenfeld.)

Q. What does the item of steel consist of?

A. There was some mention made to me of boilers, loading platform and certain steel in the refinery proper.

Q. Was it your understanding that this total estimate of 1,500 tons, which you mentioned, referred solely to surface equipment?

A. This estimate of 1,500 tons, so far as I can recollect in my conversations with Mr. McGahan, was an estimate solely estimated as to the rough 1,500 tons, while there might be a little bit more or might be a little bit less; and so far as surface equipment on it, I presumed that the pipe was lying on top of the ground, or a few feet under the ground, where it had to be dug up to get it out.

Q. In what form? A. Horizontal.

Q. Do you mean pipe lines? A. Pipe lines. That was my idea of what it was, although I had no idea of what was up there, because I had never been up on the property. [37]

Q. Subsequent to that conversation did you make any report of that conversation to Mr. Morris Ferer?

A. Subsequent to that conversation I might have come into the office close to 5 o'clock, and at one time I think I saw Mr. Krasne in the office. Mr. Ferer was always so busy that I would drop in and out, and tell him "I have got some information for you you might be interested in," pertaining to certain deals of which this might have been one of them. He would say "See me tomorrow on it," and tomorrow he would be a little busy, when I would

(Deposition of David Zeidenfeld.)

give him certain figures on things; would give him an estimate of what was on the place, and the tonnage figures only.

Q. Subsequent to the conversation I just mentioned, which you had in Mr. McGahan's office, what conversation did you have with Mr. Ferer about this matter?

A. I think at one time I came into the office, and there was another salesman in the office at the time. It was not exactly a meeting amongst ourselves; I think it was after 5 o'clock, when I brought the matter up to Mr. Ferer. I don't know whether he himself felt—

Q. I am only asking you for the conversation, not as to what you think Mr. Ferer felt.

A. I don't want to guarantee exactly the day when I brought it up to him. I tried to see him a couple of days after that. There were so many deals of which this was just one, which I brought up to him. [38]

Q. Confine yourself to your discussion with Mr. Ferer, as to this particular deal. What was your conversation?

A. My conversation with Mr. Ferer—I would like to get something straight; I remember speaking to him, but whether I spoke to him first, or Mr. Clements spoke to him first, I don't recall.

Q. I am not asking about any conversation with Mr. Clements. I just asked you about your conversation with Mr. Ferer.

A. I think I spoke to him about so many tons of pipe up there and so many tons of steel.

(Deposition of David Zeidenfeld.)

Q. When you say "so many" did you mention the quantity?

A. I think I told him the estimate Richfield had was roughly 1,500 tons, of which 900 tons was pipe, and 600 was steel, which will have to be looked at pretty quick, because they will be asking for a bid on it in the near future—in a week or two weeks from now.

Q. What else was said in that conversation with Mr. Ferer about this transaction?

A. I don't think much more was said. I think I got out of the picture after that, because Mr. Clements was in.

Q. I am asking you about this particular conversation.

A. This particular conversation I don't think lasted over three or four minutes.

Q. You told him the tonnages Mr. McGahan had on it? [39]

A. That's right.

Q. How long after your conversation with Mr. McGahan did this conversation with Mr. Ferer take place?

A. I imagine the next three or four days.

Q. Would that be around the first week of December?

A. I imagine it would be the first or the second week, because this November 28th date, I don't recall whether that was the exact date I saw Mr. McGahan, or whether it was the first part of December I saw him.

Q. Do you know the date on which Aaron Ferer & Sons submitted a written bid to the Richfield Oil Corporation?

A. No, I don't.

(Deposition of David Zeidenfeld.)

Q. Did you know that a written bid was submitted by Aaron Ferer & Sons to the Richfield Oil Corporation?

A. I knew a bid was submitted after the bid was submitted. It might have been a week after the bid was submitted I heard about it, some time in January.

Q. You heard about it?

A. After all, when a company submits a bid, there is bound to be something get out that the company had entered into an agreement.

Q. Do you know whether this conversation which you had with Mr. Ferer was before or after the date on which Aaron Ferer & Sons submitted a written bid to Richfield?

A. I think it was before.

Q. Do you have any means of recalling whether it was [40] before or after? Is there anything which fixes that date in your mind?

A. It was some time in December, as I recall from hearing a few little things later. The bid was entered into either the latter part of December or the first part of January. This was in the early part of December.

Q. You fix it as being the first or second week in December as the time of your conversation with Mr. Ferer? A. That's right.

Q. At the time of your conversation with Mr. Ferer was there any mention of the price to be bid by Mr. Ferer for this property?

A. Not at that time. I think the price entered into it a week or so after that; maybe two weeks after that.

(Deposition of David Zeidenfeld.)

Q. When you say "after that" do you mean after this particular conversation with Mr. Ferer, in which you told him of the total tonnage? A. That's right.

Q. Within a week or two after that conversation you had another conversation with Mr. Ferer?

A. I just came into the office where he and Mr. Clements were discussing certain things where I thought I might be able to help out on a deal.

Q. Was that conversation before Aaron Ferer & Sons had submitted the bid?

Mr.* Krasne: If he knows. He testified he did not know [41] when the bid was made.

A. It was before the bid was entered into.

Q. By Mr. Paradise: Did you discuss price with Mr. Ferer at that time, the price which he should offer for this property?

A. The only thing I submitted to Mr. Ferer was "I think that it will take this much money to go into it." Whether or not Mr. Ferer took notice of that—

Q. I am merely asking about your conversation. When you mentioned the price which it would take, what was the amount that was mentioned?

A. I think somewhere around \$20,000.

Q. Can you repeat the full conversation about that amount?

A. As to what? I don't understand your question.

Q. I am asking you as to your conversation with Mr. Ferer, in which you mentioned the sum of \$20,000.

(Deposition of David Zeidenfeld.)

A. I just used to come into the office, regarding a deal, and I would generally tell him "If you are interested in it, it will take this much to buy it. Otherwise Richfield is going to sell it piecemeal."

Q. Is that the conversation in which you mentioned \$20,000?

A. I think it was somewhere around that.

Q. And in that conversation was there any mention by you of the estimated tonnage? [42]

A. No, I think by that time I was out of the picture entirely. I was not consulted about it.

Q. I am only asking whether or not you mentioned tonnage at the time you mentioned \$20,000.

A. No, I don't think I did any more.

Q. Did you have any other conversation with Mr. McGahan concerning this matter, other than the ones which you have mentioned, and which occurred prior to January 17, 1941?

A. I saw Mr. McGahan, according to the note book, on the 23rd of December. Whether it was pertaining to this deal or not, I don't recall.

Q. Where did that conversation take place?

A. It took place at Richville.

Q. What was the substance of that conversation?

A. I can't exactly say just what we were talking about at that date, but I still believed that on that date Richfield and Aaron Ferer & Sons were not completed yet with the deal that they had made on some scrap material they were hauling out of there.

(Deposition of David Zeidenfeld.)

Q. Are you talking about Casmalia, or another transaction?

A. I am talking about another transaction.

Q. Did you have any talk with Mr. McGahan on that date concerning this Casmalia transaction?

A. I don't think anything more was entered into about [43] figures.

Q. Did you have any discussion about this transaction with Mr. McGahan on that date?

A. I might have brought up with him when the bids were to be opened, when the bids were to be closed, or something of that nature, but other than that I don't think much more was discussed about it.

Q. Calling your attention again, Mr. Zeidenfeld, to page No. 7 of Plaintiff's Exhibit No. 1, did you and Mr. McGahan discuss at that conversation, which I understood you to state occurred within a few days subsequent to November 28th—did you discuss the footage of the pipe lines that are shown on that page?

A. Mr. McGahan may have mentioned it, but I did not take any heed as to footages.

Q. At any of the times which you have mentioned, including your conversations with Mr. McGahan and your conversations with Mr. Ferer, did you have any knowledge that there were any oil wells on the property?

A. I don't even think they were ever mentioned between Mr. McGahan and myself. I did not know anything about the property, whether there were oil wells on the property, or away from the property.

(Deposition of David Zeidenfeld.)

Q. Was it your understanding, during all of these conversations, that the items of equipment which you were discussing with Mr. McGahan, and which you afterwards discussed [44] with Mr. Ferer, at the conversations you have mentioned, were surface equipment?

A. To answer that question correctly, what do you mean by surface equipment? Are you referring to pipe lying on top of the ground, uncovered, or are you referring to pipe which might be two or three feet under?

Q. When you say two or three feet under, do you mean pipe lines?

A. If that is what you mean by surface equipment?

Q. Yes.

A. That was what I thought it was; that the pipe lines were equipment of that nature.

Q. Was it your understanding that the items you were discussing included refinery equipment, such as boilers, tanks and pumps, and also included pipe lines, and did not include anything else?

A. That might have been my assumption.

Q. Was that your understanding?

A. There was no definite understanding between Mr. McGahan and—

Q. I am talking about your understanding.

Mr. Krasne: Let him finish his answer.

A. So far as my understanding is concerned, I really thought in my own mind, that it was line pipe, boilers, refinery, and that type of equipment; and that oil wells didn't even exist on the property. [45]

(Deposition of David Zeidenfeld.)

Q. By Mr. Paradise: When you speak of line pipe you are referring to pipe lines, are you not?

A. When I figured on pipe, I figured it was pipe lines.

Mr. Paradise: Is it satisfactory, Mr. Krasne, to substitute photostatic copies of these sheets in lieu of the originals?

Mr. Krasne: Yes.

Mr. Paradise: That is all.

Cross-Examination

Q. By Mr. Krasne: Mr. Zeidenfeld, counsel has used the words "surface equipment" in some of his questions to you. Isn't it a fact that the question of whether any of the material was on top of the ground or under the ground never actually entered into your mind until in recent discussions you learned there was a controversy between Richfield and Aaron Ferer & Sons?

A. I just referred to that as so many tons of that and so many tons of this. Mr. McGahan, so far as he was concerned, mentioned certain things I was not interested in, inasmuch as I was looking for specific tonnage. So far as the surface equipment itself, he may have used it, but I don't recall it exactly though, because I was judging it in so many tons of pipe.

Q. Because the use of that word by counsel is rather [46] a point in this controversy I want you to be sure, in giving your answer, you are talking about what you thought at the time Mr. McGahan gave you whatever information he gave you and not to what you are

(Deposition of David Zeidenfeld.)

thinking now in the light of the lawsuit between Richfield and Aaron Ferer. Do you understand what I mean? Do I make myself clear?

A. I understand what you mean.

Q. So then, isn't it a fact that at all of the times that you ever discussed this matter with Mr. McGahan you didn't give any thought to whether the material was on the surface or under the ground; what you wanted to know was how many tons of material there was up there, isn't that right?

A. Primarily that was what I was interested in.

Q. Prior to your discussions with Mr. McGahan you had never been up to the Casmalia property, had you?

A. Not prior to it, nor after it.

Q. So that actually your earlier discussions with Mr. McGahan were to the effect that they had some property on which there would be some material for sale, is that right?

A. That's right.

Q. You don't know how much of the property was devoted to the oil field, or how much of the property was devoted to refinery activities when you first began discussion of this with Mr. McGahan, did you?

A. I had no idea as to the use of the property at [47] that time. I knew there was a lot of material on the property to be sold.

Q. That's right. And from the nature of the work that you were doing, looking for purchases of material, it would not make any material difference whether you were looking for pipe that was in one form or another, would it?

(Deposition of David Zeidenfeld.)

A. I was primarily interested in pipe, or anything that has metallic value.

Q. In other words, when you were discussing, in a preliminary way, this possible deal that might be coming up, if some pipe was taken from the property for that purpose, it wouldn't make any difference whether the pipe would come from horizontal lines or vertical lines, would it?

A. It would not make any difference at all, because the firm was interested in anything that they could turn to make some money out of.

Q. Isn't it a fact that when Mr. McGahan told you that he thought there was approximately 900 tons of pipe on the property, you did not stop to consider in what exact form on the property that pipe was, did you?

A. I did not consider it. I am assuming that the pipe was in pipe lines.

Q. When you say you are assuming it, was anything said that led you to that assumption?

A. It led me to that assumption because I had never figured on any pipe in wells, and I will say also any pipe [48] vertically in the ground, previous to that time.

Q. You mean your particular experience had been such that you had not dealt in any vertical pipe in the ground? A. That's right.

Q. In the first discussion that you had with Mr. McGahan, which I believe you said was some time in September, Mr. McGahan simply told you, I believe, that he thought he would have a deal for you, but they were not ready to talk about it?

(Deposition of David Zeidenfeld.)

A. He told me, if I remember correctly, that there was a deal coming up, which will involve quite a bit of pipe and other materials. I think that was the way it was brought up.

Q. What the form of the pipe was, or was to be, was not discussed?

A. No, it was purely on the assumption of what it might be. There was nothing definite, so far as I am concerned, which was said at that time.

Q. When you had this conversation in which Mr. McGahan told you what he estimated the tonnage to be, did he tell you that the company wanted to sell you 900 tons of pipe? Is that the quantity that he said he wanted to sell?

A. No, I think he just used those figures for the benefit of the buyers, to give them an idea; that there might be that or a little less or a little more. It was purely an estimate of the tonnage. There was no exact tonnage.

Q. Did he say anything about what form the company [49] would be interested in accepting bids?

A. I don't understand your question.

Q. In other words, did he tell you if Aaron Ferer & Sons were interested in the material on the Casmalia property that they should go and look at it and make him an offer? Is that what he told you?

A. That's right.

Q. Did he tell you that Richfield wanted to sell everything on the property up at Casmalia, with the exception of certain items that they were to hold back?

(Deposition of David Zeidenfeld.)

A. If I remember right, he gave me the route to take up there, and told me to go up there and find Mr. Duncan up there, and he will show you around, and you figure all the stuff on the property, and we were to bid on that, and we will have a man to show you around.

Mr. Paradise: I would like to know which conversation the witness is referring to.

A. That was one of the conversations or later conversations. I told him I had not been up there. I think it was some time in December when he gave me that route to go up and see the material, because I understand there were quite a few other bidders going up there at the time, and they wanted to get them up there at a time when either Mr. McGahan was there or somebody that knew something about it.

Mr. Paradise: Are you referring to the conversation at the time Mr. McGahan showed you the document, or at a time [50] prior to that?

A. No, it was at the time of the documents, or maybe a little after that.

Q. By Mr. Krasne: In other words, what you understood from Mr. McGahan was that they had a deal up at Casmalia, in which they wanted to sell all the material on the property?

Mr. Paradise: I object to this upon the ground that it states facts not in evidence. The witness did not testify to that.

Mr. Krasne: This is cross-examination. Let us find out what he understood the conversation to mean.

(Deposition of David Zeidenfeld.)

Mr. Paradise: Let us ask him. Read the question Mr. Reporter.

(Question read by the reporter.)

Q. By Mr. Krasne: —and that Aaron Ferer & Sons should go up and look at it and see for themselves what there was there, and take their own chance as to the quantity, and make a bid to Richfield, is that correct?

Mr. Paradise: I object upon the same ground.

Mr. Krasne: Answer the question, please.

A. Is it all right to answer the question?

Q. Yes.

A. I want to treat everybody right.

Q. Let me explain to you, so that you will understand the nature of this procedure, that when a question has been [51] asked you, the mere fact that opposing counsel makes an objection does not mean that you are not to answer the question. You are still to answer the question. Counsel's objection has been noted in the record, and if necessary will be passed upon by the court.

The Witness: Can you read the last question, please?

(Question read by the reporter.)

A. That is correct, with the understanding that there would be somebody up there to show us around where this material was located.

Q. By Mr. Krasne: Isn't it a fact that Mr. McGahan told you that he did not want you to hold him as to these estimates as to quantities; that actually it was a field

(Deposition of David Zeidenfeld.)

that he did not have complete records on, and that that was merely his estimate as to what you would find on the property?

A. I believe in all justice to Mr. McGahan that was a theoretical estimate of what he thought was there; that there might be a little bit more—lots more or less, but he felt that that figure in his mind was what there was there, but it was up to the buyer to determine for themselves as to what they thought was there. That was just a guiding figure of what he thought, that he furnished the buyer.

Q. You had had previous dealings with Mr. McGahan's department in the Richfield corporation, hadn't you? A. Yes, sir. [52]

Q. And in connection with other deals where you were interested in buying salvage material, did the records that Mr. McGahan had give more or less detailed information than the information which he was able to give you on this deal? [53]

A. Well, the other deals that I had bid on with the Richfield were all deals that we bid on a tonnage basis or were in lots small enough so there wouldn't have been a margin one way or the other; you couldn't lose too much money on it, or if you lost it all, you couldn't lose very much. If I remember, the way Richfield bids are made up for their own departments, they make up a list of a certain lot number, with so many items. This is outside of the scrap iron in general, where they might have a couple of pumps and other items.

(Deposition of David Zeidenfeld.)

Mr. Paradise: Just a minute. Are you speaking of some specific documents you have seen?

A. I am talking about bid forms put out by Richfield.

Mr. Paradise: Are you talking about documents?

A. I am not talking about any big deal; just little bids put by the company.

Mr. Paradise: Are you referring to letters, communications or documents?

A. I am talking about letters they sent to us, to all bidders, asking for bids on equipment.

Mr. Paradise: I object to any testimony concerning any such documents, as not the best evidence.

Mr. Krasne: I will put the question a little differently.

Q. When you had occasion to discuss deals with Mr. McGahan with respect to the purchase of other materials, Mr. McGahan has been able to give you detailed information [54] concerning the quantity they desired to sell, isn't that right?

Mr. Paradise: I object to that as leading and suggestive, and entirely incompetent, irrelevant and immaterial to the issues in this case, as to what they did in other deals.

Mr. Krasne: Answer the question.

A. Mr. McGahan did not have to, because it was usually listed on a sheet of so many pieces of this item that they wanted to sell, that they could either bid on as junk, or bid on the full lot.

(Deposition of David Zeidenfeld.)

Mr. Paradise: I move to strike the witness' answer upon the ground that he is testifying to a written document that is not before us; we don't have it here, and it is the best evidence.

Q. By Mr. Krasne: Did the information Mr. McGahan gave you in connection with this Casmalia deal differ from the type of information that he ordinarily gave you in connection with other deals?

Mr. Paradise: Are you asking for a comparison between this and other written documents, Mr. Krasne?

Mr. Krasne: I am asking him as to the information that was given to him.

Mr. Paradise: Same objection. This inquiry is directed to the contents of written documents.

A. Well, other than hearing information that we got was simply to bid on certain lots of material which they [55] might want to get off their inventory by listing them that way, and charging the money back against the inventory, which they received from that type of material. I imagine they had to list them that way: whereas in this bid here, the items that were readily seen I imagine were on that list, but the items that were not visible, such as pipe, I imagine he tried his best to get what they were, and list them. There was a lot of that stuff that was in the field, I understand, prior to Richfield taking over the field.

Q. By Mr. Krasne: Isn't it a fact that Mr. McGahan told you that in this deal he did not have the same type of information that he ordinarily had, because this was an old field and the material that was up there for sale

(Deposition of David Zeidenfeld.)

was material that had been put in the field long before he had anything to do with it?

A. I don't remember any reference to whether he told me anything about that but—

Mr. Paradise: That is all the question was.

Mr. Krasne: Finish it.

A. But so far as this bid was concerned, this was a bid that was to be a bid on the whole works, whereas with other bids you might have 30 or 40 different lots where you are to bid on each individual lot.

Q. What did Mr. McGahan tell you about going up to look at the property and seeing for yourself what there was there, if he did tell you anything to that effect? [56]

A. All that I remember Mr. McGahan telling me was to go up to the property, and that someone or Mr. Duncan would be there to show us around as to just what they wanted to go, or what things they wanted to sell might be, and for you to determine in your own mind what you were going to give, figure it out, and turn your bid in to the office.

Q. He did tell you, didn't he, that these estimates which he told you he had were based upon pretty scant information, and he did not want to be held to them?

Mr. Paradise: I object to that as putting words in the witness' mouth.

Mr. Krasne: This is cross-examination. I think I have a right to.

(Deposition of David Zeidenfeld.)

A. Mr. McGahan did not tell me that in so many words. He said this estimate he was showing me is simply something to guide me as to what he thinks is there, and for me to go up and use my own judgment from there, and if there was any more there I could bid a little bit more, and if I didn't think there was very much. I could bid a little bit less.

Q. Isn't it a fact that you didn't actually formulate any opinions as to the nature of the pipe that would be on the property, at the time you had your discussions with Mr. McGahan, but were rather waiting until the property would be looked at to see what kind of pipe was on the property?

A. I in my own mind thought they were pipe lines, [57] but, like I say, formulating a definite opinion, I didn't, because I had not been up there on the property, and I thought that when I would go up to the property, I really assumed that there were pipe lines, when I got there or we got there, but inasmuch as I had never been over there I just at that time was assuming.

Q. In other words, that was a matter that would be deferred until you would actually go up and see what kind of pipe was on the property, isn't that right?

A. Any deal of that nature that involved that amount of money requires inspection. A man if he were to spend any money, he would want to see what he was going to buy, whether it was in line, or anywhere else. I don't want to say I did not know they were in line, because I did not. I just assumed they were line pipe.

(Deposition of David Zeidenfeld.)

Q. These discussions with Mr. McGahan were, in your mind, very preliminary discussions, were they not?

A. Everybody has these discussions prior to any deal they are going into of this magnitude.

Q. If you had known that there were old oil wells on the property at the time you had this discussion with Mr. McGahan, and if you had known that there was pipe in those wells, your surmise that the pipe that was on the property was only horizontal pipe might have been entirely different, isn't that right?

Mr. Paradise: I object to that as being entirely [58] hypothetical, inasmuch as the witness has testified he did not know anything about the existence of any oil wells on the property, and had assumed that all of the pipe that Mr. McGahan was talking about was pipe lines, as he testified.

Mr. Krasne: I will withdraw the question and ask you this, Mr. Zeidenfeld: In these preliminary discussions that you had with Mr. McGahan, in which he told you that he thought that there was about 1500 tons of material up there, you did not actually have the faintest idea of just where that was on that property, isn't that correct?

A. I didn't picture anything too much, excepting that here is a piece of property with a loading rack; you drive in, you have to cross the river to get to the refinery way on the other side, and the pipe lines are somewhere way in there. I am assuming they were pipe lines, because I had in mind at that time, I knew there were a

(Deposition of David Zeidenfeld.)

lot of hills and dales to crawl over, and what was in these hills I did not know, or anything, because I knew it was a pretty big plot of land.

Q. All you knew was, here was a company which thought they had about 1500 tons of material up there, and that was a sufficient quantity to justify you in going up there and looking at the property, and seeing what was there, isn't that right?

A. That is true of any person that is bidding on material. [59]

Q. You told Mr. Ferer, I believe you said, after this conversation, that there was the Richfield deal coming up; that was probably the first thing you told him, isn't that right?

A. That is right.

Q. You did not go into any details?

A. I told him, if I remember correctly,—it is a little vague in my memory right now—that there was a good sized deal coming up at Richfield, and I don't know what Mr. Ferer answered me, whether he just threw it off and mentioned something else; I don't know as to that.

Q. You did not go out to see this property with Mr. Ferer, did you?

A. No, I didn't.

Q. You have never been on the property, is that right?

A. No.

Q. Did you tell Mr. Ferer that if he were interested in this deal, you would go up and look at it, and see what was on the location, and tell him, and make a bid?

(Deposition of David Zeidenfeld.)

A. I think I did, but I think somebody else entered into the picture at that time; and either that somebody else had gone up there, and looked at it already, and had probably spoken to him about it.

Q. In other words, isn't it a fact, Mr. Zeidenfeld, that after casually mentioning this possible deal with Mr. Ferer, that thereafter he carried on in his looking, and his [60] negotiations, and the purchase, in connection with his deal, without you? A. That's right.

Mr. Paradise: I object to the question, and move to strike the answer upon the ground that no proper foundation has been laid.

Q. By Mr. Krasne: And you did not know in advance of Mr. Ferer going up on the property that he was in fact even going, isn't that a fact?

A. No, I heard the day after he got back that he had been up there.

Q. You don't know what material on the property Mr. Ferer looked at, do you?

A. I don't recall anything being mentioned to me about it after he had once gone up, with one exception, where he might have asked me again at that time what it would take to get it; what it would take to buy it.

Q. After Mr. Ferer had come back from the property he had no discussions with you with respect to what he had looked at up there, isn't that right?

A. That's right.

Q. Mr. McGahan, in his conversations with you, when he referred to what he thought would be about 900 tons of pipe, used the word "pipe", didn't he?

(Deposition of David Zeidenfeld.)

A. In my mind, he used the word "pipe." He might have sometimes used the words "line pipe" in speaking.
[61]

Q. But he referred to it all as pipe, didn't he?

A. He referred to it all as pipe, but sometimes he might have mentioned the words "line pipe" too. Whether that would constitute the whole was line pipe, or whether I, in my own mind, had it already figured out as line pipe, that is something else. I had no formulated idea exactly what it was, but I just figured that is what it was, pipe in line.

Q. I notice on the first page of Defendant's Exhibit No. 1 for identification, and which has been offered in evidence as Defendant's Exhibit No. 1, the notation, "Pipe—920 Tons." Is that right? A. That's right.

Q. Isn't it a fact that when you saw that, you thought in terms of tonnage, 900 tons of pipe, you were thinking in terms of pipe as it was received to be for resale by someone interested in the salvage business, isn't that right?

A. That is how I figured the pipe; so many tons of pipe, which could be resold at so much money, and so many tons of steel.

Q. Right. So when you were thinking in the terms of Mr. McGahan's estimate of 920 tons, approximately that amount, in your mind at that time it did not make a particle of difference whether that was pipe from a vertical line or from a horizontal line, or that happened to be lying loose on top of the property, is that right?

(Deposition of David Zeidenfeld.)

A. That's right; it did not make any difference. But [62] can I add something to that?

Q. Yes.

A. The pipe itself, so far as tonnage is concerned, it did not make any difference to me whether it was horizontal or vertical; the only thing I can say, I had no formulated idea that this was pipe in line, or anything else, but just an arbitrary vision I had in mind that it was horizontal pipe. I had no other idea of pipe at the time, because I hadn't seen anything on the property.

Q. In other words, in this very preliminary discussion in which you were learning for the first time that Richfield had approximately 900 tons of pipe, you got a visual picture of what you guessed would be the nature of the property from which this pipe would be removed, is that right?

A. That is exactly right.

Q. You don't mean to convey the impression by the answer which you have given to Mr. Paradise's question, do you, that you were considering this deal from the point that Aaron Ferer & Sons were only to buy horizontal pipe?

A. As far as what I answered before, Aaron Ferer was interested in buying anything of value, of metallic value, that they could resell for a profit, be it horizontal or vertical, but in this case I had no formulated idea. I am just repeating myself time and again.

Q. I want to get what was in your mind absolutely clear; that is why I have asked you this question. I want [63] to get your last and final answer, that so far as your thoughts were concerned, all you gathered from

(Deposition of David Zeidenfeld.)

Mr. McGahan's discussion was that he thought there was approximately 900 tons of pipe, and that you looked at that potential purchase of 900 tons of pipe, irrespective of where it came from, isn't that right?

A. That is right.

Q. When Mr. McGahan told you that if Aaron Ferer & Sons were interested in making the bid, they should go up to the property and see for themselves whatever there was on the property, and make a bid, he told you there were a few things on the property that Richfield did not want to sell, isn't that correct?

A. That's right.

Q. You understood from what Mr. McGahan told you, however, that, except for the items that they did not want to sell, they were interested in obtaining a bid for everything else that there was on the property, isn't that right?

A. That was my assumption.

Q. And when Mr. McGahan was telling you about the items that were to be excluded, or held back, did he tell you that Richfield did not want to sell the pipe that was in the oil wells on the property?

A. I don't ever recall hearing anything about oil wells on the property. It did not even enter my mind about wells being around there, although I figured if there were [64] any they were on somebody else's property, or some place where the oil might have come from.

Q. I would like to see if you can answer my question yes or no. I will reframe it: When Mr. McGahan told you that they would be interested in getting

(Deposition of David Zeidenfeld.)

a bid for everything on the property, with the exception of the items that they wanted to hold back, he did tell you what items they had to hold back, or wanted to hold back, did he not?

A. He gave me an idea of what they were, and when I came to the office I think they already knew about that.

Q. Did he or did he not say to you in substance and effect, "We desire to retain, and do not want to sell, the pipe that is in the oil wells"?

A. I don't recall anything mentioned of pipe in the oil wells up there.

Q. So that he did not tell you that they wanted to hold back or retain the pipe in the oil wells, did he?

A. If he did, I don't recollect that he did.

Q. As a matter of fact, you are sure that he did not say that, aren't you?

A. I am quite sure. As a matter of fact, I can just about say definitely that I don't remember anything like that taking place.

Q. Did Mr. McGahan tell you that Richfield did not want to sell any producing or refining equipment that was not on top of the land? [65]

A. I don't even think that we discussed anything about on top or under at all. There was just so much equipment on the property.

Q. That's right. Mr. McGahan then never said to you, in substance or effect, that one of the items they wanted to retain was any pipe that might be below the surface of the land; he never said anything like that to you, did he?

(Deposition of David Zeidenfeld.)

A. I don't think there was any mention made in my conversation with him concerning the oil wells on the property.

Q. I am asking you about any pipe; he did not tell you there was any pipe that was not on top of the surface of the land that was not to be included in the deal, did he?

A. I don't recall exactly whether there were a few lines Richfield wanted to keep, or whether "that line did go, or this line don't go." I don't think any mention was made of any pipe in the oil wells because I don't think it entered my mind that there were oil wells on the property.

Q. Please, Mr. Zeidenfeld, listen to this question so that you can answer it: In your discussions with Mr. McGahan did he say to you that Richfield did not want to sell any pipe, or any production equipment that was not on top of the surface of the land? Did he tell you that?

A. Can I ask you a question pertaining to your question, whether this is the same substance of your question: Are you trying to ask me whether Mr. McGahan asked me, or told [66] me that no pipe in the oil wells goes?

Q. That you have already answered; you answered that he did not tell you that, that is correct?

A. He did not tell me anything about it. It was not even brought up in the discussion.

(Deposition of David Zeidenfeld.)

Q. There wasn't any mention at all?

A. That is right.

Q. Therefore you can say with certainty, can you not, that Mr. McGahan did not tell you that Richfield wanted to hold back the pipe in the wells?

Mr. Paradise: I think the entire line of questions is entirely argumentative. He has already testified there was no discussion of the wells.

Q. By Mr. Krasne: It is likewise true, is it not, that Mr. McGahan, in his discussions with you, the things he said, never made any distinction between any of the equipment that had been on top of the surface, or any of the equipment that might have been below the surface; he never discussed it at all, isn't that right?

A. There were no discussions, that I recall, anything about that. If you are referring to anything that was in the ground or on top of the ground, we just referred to so many tons of material there.

Q. That's right. And the reference was to Mr. McGahan's estimate of so many tons of material, without either of you having said a single word about where that [67] equipment was to come from, isn't that right?

A. The material on the property; they wanted to sell all material on the property, from what I understood, with some exceptions. I was never up to the property, so I wouldn't know what it was all about. I was supposed to go up there to see it, but I never did go up.

Mr. Krasne: That is all.

(Deposition of David Zeidenfeld.)

Redirect Examination

By Mr. Paradise:

Q. In one of Mr. Krasne's questions to you, Mr. Zeidenfeld, I think he framed his question by asking if it was not true that you did not have the faintest idea of what the items were that you were discussing with Mr. McGahan. What period of time in these negotiations were you referring to? First, may I ask if you recall that question of Mr. Krasne's?

A. With reference to whether I just formulated in my mind so many tons of material on the property, in one form or another,—is that what you are bringing out?

Q. No, Mr. Zeidenfeld, his question to you said: Isn't it true that you did not have the faintest idea of what the items were that you were discussing; that is to say, the items on the property. I am trying to fix the time to which your answer to that question referred. Is it not true that the time you were referring to was the [68] time of your first conversation with Mr. McGahan, in September of 1940?

A. That's right. All I knew at that time, there was a lot of material for sale.

Q. Did you obtain any more specific idea of what the items were of equipment to be sold, at your subsequent conversations with Mr. McGahan, during the first week of September?

A. I, in my own mind, got the idea that there was a lot of pipe; there were tanks, boilers, and so forth, which were to be sold up there.

(Deposition of David Zeidenfeld.)

Q. When was it that Mr. McGahan suggested to you that you go up there and visit the property, in which of the conversations you referred to?

A. I think it was in the conversation around the first part of December, or the latter part of November.

Q. Was that after Mr. McGahan had showed you these documents, these sheets, that is that are marked Exhibit No. 1, or was it before that time?

A. Just about that time. It was all within a period of two days one way or the other. He asked me, I know, on different occasions while I was around there, even while we were walking around, looking at other materials, on bids, "Have you gone up to see it yet" and this and that. I told him, "Not yet, but one of these days." So, so far as the dates being exact, I can't give those to you at this time, [69] because I don't have any record of it.

Q. At the time Mr. McGahan showed you these documents, about the first week of December, did he state he had any more specific idea of what items were on the property than he had at the time of the first conversation with you?

A. Yes, he did. He said he had been compiling these estimates every trip he made to the property, every week or two, or whenever he gets up there, and just added them to that original estimate that he had, and from that made this so-called estimate that he has in this Exhibit No. 1.

Q. Did Mr. McGahan tell you whether or not he would accompany you on any inspection trip that you would want to make of the property?

(Deposition of David Zeidenfeld.)

A. He told me once or twice, maybe even three times, that he was going to be up at the property next Monday or Tuesday, or whatever part of the week it happened to be, and "if you can come up during the day, I will be pleased to show you around." I told him "I think I am going to be up" once, and I failed to show up, because at that time there was an agreement already entered into by Mr. Ferer and the other party concerning that, and I was more or less out looking for something else.

Q. Did Mr. McGahan ever tell you, in any conversation between yourself and him, that everything that Richfield had on the property would be sold with the exception of certain items which he described? [70]

A. The way he put it to me, "all this material I am showing you, or telling you about the tonnage, you know, this 1500 tons, is on this property, but we want to retain"—I don't recall whether it was one or two or three pipe lines on the property, and he gave me a list of some tanks he wanted to keep, and there was a list of some items that were to be held, and as far as the oil wells, we never did go into the conversation at all as to anything pertaining to wells on the property.

Q. Did you have an idea, from your discussion with Mr. McGahan at that time he showed you the documents, as to what types of equipment would be sold? Did you discuss the types?

A. The only thing I remember discussing with Mr. McGahan, outside of there was a little pipe—he said once in a while "Here is some 8 inch line, or 6 inch line," and I told him it did not make any difference to me whether

(Deposition of David Zeidenfeld.)

it was 6 or 8 or 4 or any size. I think we dwelt a long time on a few little pumps he had on the list: These are pretty good pumps, I remember his telling me, and that the company wants to reserve one of the few he had marked off in the book, or: By the way, we just sold this pump to somebody else, they wanted it for their use.

Q. Isn't it correct that the estimate of material that Mr. McGahan showed to you, and explained to you, broke down his estimate of the aggregate tonnage of 1500 [71] tons to between approximately 900 tons of pipe lines, and the balance approximately 600 tons of other steel?

A. That's the way he had it compiled in his estimate, as to what he felt was there.

Q. And what did you say were the items that composed other steel, other than pipe lines?

A. So far as pipe line was concerned—

Q. I am talking of the other items other than pipe line.

A. The other items of steel consisted of—there was a loading rack, some boilers, also pumps, and refinery equipment mainly, I imagine, that is what most of the steel was, in the refinery division.

Q. In your own mind were you considering anything other than pipe lines and the other items of steel which you mentioned?

Mr. Krasne: I object to the question upon the ground it assumes facts not in evidence. Counsel is putting words into the witness' mouth, and keeps referring to 900 tons of pipe line. The witness' testimony has been

(Deposition of David Zeidenfeld.)

that the estimate was that there were 900 tons of pipe. The exhibit which counsel has offered in evidence refers to 900 tons of pipe. Whether counsel desires to confuse the witness, or the record, by constantly referring to 900 tons of pipe line, I think the record should be clear that there were 900 tons of pipe. [72]

Mr. Paradise: There is certainly no desire to confuse either the witness or the record. I think Mr. Krasne's statements are entirely unwarranted. Just answer the question. A. In my own mind—

Q. Do you recall the question?

A. You are asking the question, whether or not the 900 tons were referred to as pipe in line—that's it roughly?

Q. That is not the specific question, but you can answer the one you just mentioned.

A. Can I have the last question read?

(Question read by the reporter.)

A. In my own mind the pipe was in line, and I had no idea that there was any other pipe on the field outside of pipe in line, because of not having been on the property.

Q. When Mr. McGahan stated to you that his over-all estimate was approximately 1500 tons, did he say that was exact or approximate? A. Approximately.

Q. Did he tell you that the property was quite old, and that some of the lines might have been taken up since the original records were prepared?

(Deposition of David Zeidenfeld.)

A. He told me, so far as I recall, that he had records that he compiled from what was on the property when Richfield took over, and he tried to deduct for those which had been [73] taken out, but he don't know whether there is any more on the property, or whether any left the property. It was purely an estimate of what he in his own mind thought was there.

Q. Did he say he thought other lines had been added?

A. I don't recall whether or not that question was asked by Mr. McGahan—I mean, whether or not he gave me an answer of that sort.

Q. Did Mr. McGahan state that some of the pipe lines might have been taken up, and that his estimate of approximately 900 tons was too high?

A. I don't recall that he said that the estimate was too high. I do recall that he told me that there was some pipe sold; somebody took some lines up, quite a few years back, and whether or not anything was added to that prior to their taking up, that might have been more than in the estimate, or not, I don't recall his telling me anything like that.

Q. I believe, in answer to Mr. Krasne's question, you stated that you contemplated making a trip to the property, and that you would not know exactly what was up there until after you had seen the property, is that correct?

A. Like I said before, I never bid on anything unless I look at it, of such a magnitude of material, inasmuch as I always try to get an estimate of what might be at a place. It helps me in determining what might be up there, [74] to either add to or deduct therefrom.

(Deposition of David Zeidenfeld.)

Q. I believe, in answer to another of Mr. Krasne's questions, you stated that it would not have made any difference to you if the pipe had been horizontal in the form of pipe lines, or had been placed vertically in the ground, is that correct?

A. So far as the tonnage was concerned, it would not make any difference, because it is all pipe, if it has weight.

Q. At that time, however, you did not know there were any oil wells upon the property, is that correct?

A. That's right.

Q. When you speak of pipe being placed vertically in the ground, are you talking about casing cemented in the oil well? Is that what your answer referred to when you talked about property placed vertically in this ground?

A. Referring to this deal?

Q. That is what you are now referring to?

A. Yes.

Q. Might there have been a discussion like that with Mr. McGahan?

A. Mr. McGahan did not mention anything like that to me.

Q. In all of the transactions which you had negotiated for the purchase of pipe line on behalf of Aaron Ferer & Sons, had you ever attempted to negotiate the purchase of any casing that was installed in the oil wells? [75]

Mr. Krasne: Just a minute. I object to it on the ground that it assumes facts not in evidence. I don't know of any evidence that this witness has ever purchased any casing that was installed in oil wells.

(Deposition of David Zeidenfeld.)

Q. By Mr. Paradise: Have you ever negotiated for the purchase of pipe lines?

A. No, this is the first deal Aaron Ferer ever entered into, since I worked with Aaron Ferer, that he attempted to take over a deal with pipe lines to be taken up.

Q. In any of your operations, whether for Aaron Ferer or not, and I am speaking now as to the period prior to the negotiations that you conducted with Mr. McGahan, had you ever attempted to purchase old pipe lines for salvage?

Mr. Krasne: I object to that upon the ground it is incompetent, irrelevant and immaterial.

A. I have had only one experience in taking up pipe lines, and they were all lines, pipe lines in general; that was at the Sunset Oil Company's refinery, at Vernon and Santa Fe Avenues,—the old refinery of the Sunset Oil Company, where we bought pipe in ground, but there wasn't anywhere near the magnitude of material in that place. We bought sight unseen, for so much money, but it did not involve too much.

Q. By Mr. Paradise: Was that a transaction negotiated on behalf of Aaron Ferer & Sons?

A. It was a transaction with the El Paso Pipe & [76] Machinery Company.

Q. Did that occur prior to the negotiations you had with Mr. McGahan? A. Yes.

Q. Do you know whether the cost of removal of pipe lines from a property is less or more than the removal of casing from any wells on the property?

(Deposition of David Zeidenfeld.)

Mr. Krasne: I object to the question upon the ground that it is incompetent, irrelevant and immaterial. For the purpose of considering my objection, I should like to state that all of the testimony of this witness would show that his contact with the deal involved in the present litigation was all preliminary, and preceded any of the actual negotiations that were carried on for the purchase of the equipment covered by the contract that is involved in this litigation; that nothing that he has testified to would make the question of whether or not he at that time concerned himself with the cost of removing material; it would be immaterial. [77]

Mr. Paradise: Will you answer the question?

A. I have never had any experience handling anything or taking up casing from oil wells. I would not know the approximate differential of cost between taking up casing from an old oil well and taking up pipe lines in the field.

Q. By Mr. Paradise: Did you, at the time of your negotiations with Mr. McGahan, know anything about the manner of abandonment of oil wells?

Mr. Krasne: I object to that upon the ground that it is incompetent, irrelevant and immaterial. The witness has testified that oil wells were never discussed between him and Mr. McGahan.

Mr. Paradise: I believe this line of examination is entirely relevant and proper, inasmuch as on cross-examination Mr. Krasne asked the witness—I think Mr. Krasne's question was whether or not it was not true that it made no difference whether the pipe was horizontal in pipe lines, or was placed vertically in the ground.

(Deposition of David Zeidenfeld.)

Mr. Krasne: That question was in reference to the estimate that there were approximately 900 tons of pipe.

Q. By Mr. Paradise: You testified, I believe, Mr. Zeidenfeld, that at the time you were discussing this matter with Mr. McGahan you had no knowledge of the fact that there were any oil wells on the property?

A. That is true.

Q. Had you known at that time that there were any oil [78] wells upon the property, and had also known that the cost of the abandonment of wells, which was necessary in order to remove casing from any of the wells, was a very considerable factor, would it have made any difference to you whether the pipe was in the form of pipe lines or was casing installed in the well?

Mr. Krasne: Just a moment before answering. I object upon the ground that the question is incompetent, irrelevant and immaterial, so far as this witness is concerned. The record shows quite clearly that he never entered into any of the actual negotiations for the deal involved in this litigation; the record shows that all he did was to ascertain, in September, that Richfield was going to have some material for sale, and that in the latter part of November he learned that in Mr. McGahan's opinion there was a total of approximately 1,500 tons of material on the job, that was coming up for sale; that after that all of the negotiations were carried on by persons other than himself.

Mr. Paradise: Will you answer the question?

A. Read the question again, please.

(Question read by the reporter.)

(Deposition of David Zeidenfeld.)

A. The only difference that it would have made would have been that I would have gotten somebody there to give me an idea as to the cost, or I would have asked somebody who was in that line to tell me approximately how much money it takes to handle a job in the nature of taking up casing, and [79] either added or deducted, before the bid that I would have made to the company for the deal.

Q. If you had had in mind, or any notion, that there were any oil wells upon the property, the cost of abandonment of which would have been a considerable figure, would that have entered into your estimate of the sum which you mentioned to Mr. Ferer of \$20,000?

Mr. Krasne: Same objection; that the questions that counsel is now asking the witness, that whole line of questioning would only have a bearing if in fact this witness had been the one who had made an offer, or if this witness had been the person to determine how much money would be spent to purchase equipment, and how much was to be taken out.

Mr. Paradise: I will withdraw the question.

Q. Did you have in mind any of the oil wells upon the property, or the cost of abandonment of any of the oil wells upon the property, at the time you mentioned that figure of \$20,000 to Mr. Ferer?

A. I had no idea of anything like that, because I, in my own mind, had had the idea that they were pipe lines.

Q. So far as you knew and were considering at that time, was there anything which was the subject of this sale that you were discussing with Mr. McGahan that

(Deposition of David Zeidenfeld.)

was other than pipe lines and the items of steel that you mentioned, which latter items comprised an estimated tonnage of approximately 600 tons? [80]

A. So far as the estimates are concerned, they took in so many tons of pipe, and so many tons of steel, and I had not been on the property, and I am telling you that I had in my own mind a picture of pipe lines, and whether others bidding had a different picture, that I can't say; but in my own mind I had no idea of oil wells in general, because I did not know they existed on the property.

Q. In referring to pipe, in Mr. McGahan's discussions with you, did he use the words "pipe lines" in that connection?

A. Do you mean in discussions prior to his taking the trip?

Q. I mean in your discussions with Mr. McGahan, not Mr. Ferer.

A. There might have been the word "lines" mentioned once in awhile, but I was looking in general terms of pipe more than anything else.

Q. When you were looking for pipe, as you say, did you have in mind pipe lines or anything else?

Mr. Krasne: I object upon the ground that it has been asked and answered several times. The witness has testified that all references were to pipe. He has also testified that he had some visual picture, an imagination more than anything else, not having seen the property, that the pipe that was on this property was probably pipe line.

(Deposition of David Zeidenfeld.)

A. Mr. McGahan might have mentioned at the time about [81] a certain line here, and about a certain line there, but I personally in general referred to pipe as pipe, and thought of pipe as so many tons of material on the property.

Q. By Mr. Paradise: When you were discussing pipe, and thinking about pipe, were you considering anything other than pipe lines?

A. Not in my own mind.

Mr. Paradise: That is all.

Recross-Examination.

Q. By Mr. Krasne: If you had gone up on the property, and you had seen 100 tons of dismantled pipe on the property, wouldn't you have thought that the 900 tons estimate of pipe on the property that Mr. McGahan referred to would have related to that as well as to any other pipe?

A. The way it was put to me, that all material on the property goes, with the exception of what was told to me, I would assume if there was anything loose on top of the ground, that would have to go in with the deal. If, for instance, a man would put to me "This goes, and this doesn't go, and everything else goes" I would assume that in "everything else" that would go with the deal.

Q. That was the way Mr. McGahan put it to you, wasn't it, to go up and check for yourself; that they wanted to sell everything up there except the items that were excluded, isn't that right? [82]

(Deposition of David Zeidenfeld.)

A. To my knowledge I believe that's the way it was put to me.

Q. You wouldn't call a disjointed pipe, for instance, pipe line, would you?

Mr. Paradise: That assumes a fact not in evidence. There is no showing that there was any disjointed pipe on the property.

Mr. Krasne: I want to find out what this witness had in mind when he said he had a picture, or imagined that the property up there was pipe line. I think the witness conveys an impression he does not mean to convey.

A. The picture in my own mind was that all the property was on the surface, the way, I pictured it in my own mind.

Q. But you did not understand, did you, from your conversations with Mr. McGahan, that if there were some other kinds of pipe on the property, other than pipe line, still Richfield only wanted to sell pipe line?

A. I assumed that what was on the property would go, with the exception of what he told me Richfield wanted to keep.

Q. And you furthermore assumed, from your conversations with Mr. McGahan, did you not, irrespective of what you imagined the type of pipe to be, that Richfield actually wanted a bid to buy all of the pipe that was on this property? Didn't you assume that from your conversation [83] with him?

A. I assumed that everything on the property goes.

(Deposition of David Zeidenfeld.)

Q. So that you don't want the court to understand, from anything that was said between Mr. McGahan and yourself, or anything that you had pictured in your mind, that Richfield wanted to enter into a deal whereby they would sell only pipe line? You did not mean to convey that impression, did you?

A. What I meant to convey was this: That everything on the property goes, with the exception of whatever little few items, such as tanks, and so forth, were to be retained by the company.

Q. And you understood, did you not, that Richfield wanted to sell all of the pipe that was on that property, irrespective of whether it was loose, horizontal or vertical—isn't that what you understood?

A. I understood that was to be the case, although in my mind I did not picture anything as vertical pipe on the property. I assumed that everything would go, but, as I have said before, I did not know there were any oil wells there, so naturally I could not assume there was any vertical pipe on the property.

Q. Didn't you picture, in connection with the refinery, for instance, considerable pipe that would not be horizontal pipe?

A. Well, in refineries there is always some pipe that [84] is vertical pipe too, that goes up on top of stills, or something like that, which would be vertical, but what I mean by vertical pipe lines, what I am discussing in this exchange of questions here, is that I use the term vertical for pipe underground, in the well itself.

(Deposition of David Zeidenfeld.)

Q. Mr. Zeidenfeld, I think in answering these questions you should not be too concerned with what you think the issue in this lawsuit is. You should not be too concerned with any impressions that you may have gathered from any conversations, if you had any, with either Mr. Paradise, myself, or anybody else connected with this litigation. In other words, I would like for you to try to be strictly a witness, and not to think of the issues of the lawsuit, and I think you have; that you have gotten confused; and I want the record to be clear. You certainly, I imagine, assumed that in this 900 tons of pipe which Mr. McGahan thought there was on the property, there would, in the dismantling of the refinery, be some pipe that was not horizontal pipe line, didn't you?

A. There was bound to be some vertical pipe.

Mr. Paradise: Are you talking about the refinery?

Mr. Krasne: For the moment I am talking about the refinery, and in connection with producing equipment in an oil well you would presume, would you not, that when that type of equipment is dismantled, that there would be some pipe coming from it, wouldn't you? [85]

A. Do you mean from a refinery?

Q. Yes, from any oil field that has pipe around it, around oil producing equipment.

A. There is always pipe around an oil field.

Q. You automatically think of such pipe in connection with that type of equipment? A. Yes.

Mr. Paradise: Are you talking about what is his present impression, or what was his impression at the time he was having his negotiations with Mr. McGahan?

(Deposition of David Zeidenfeld.)

Mr. Krasne: Both. In other words, let us direct our consideration to the time when you had your discussions with Mr. McGahan. At that time you visualized, did you not, that there was a field and a refinery, and that all the producing equipment, and all of the refinery equipment, was going to be dismantled; isn't that what you pictured in your mind?

Mr. Paradise: That assumes facts not in evidence, and I object to it upon that ground. He said he did not know there was an oil field on this property.

Mr. Krasne: He said he pictured something in his mind which he imagined to be a pipe line.

A. I pictured that there must have been an oil field to have a refinery around there, because they are not just putting up refineries just for the sake of having buildings; there must have been a field nearby, but I did not know, in my own mind, whether or not this oil field was on the Richfield [86] property, or whether on the adjoining property with pipes laid therefrom to the property.

Q. I am not for the moment talking about this controversy. I am talking about what you saw in your own mind about this whole deal up there. You pictured the dismantling of a field, didn't you? A. Yes.

A. Yes.

Q. And didn't you assume that when the producing equipment would be dismantled, that out of the salvage there would be some pipe? A. Naturally.

(Deposition of David Zeidenfeld.)

Q. And so, whatever pipe you thought would come from the dismantling of the refinery equipment and producing equipment, of whatever nature would be found up there, you thought, did you not, that Mr. McGahan had included all of that pipe in his over-all estimate of 900 tons of pipe?

Mr. Paradise: I object to that as assuming a fact not in evidence. There is no testimony whatsoever of the dismantling of any producing field, and the witness stated he did not know there was an oil field on the property.

A. I can tell you that I assumed this: That if there was any pipe on the property, I did not picture in my mind any oil wells on the property at all.

Q. By Mr. Krasne: You had not been talking about oil wells; you had been talking about oil pipe?

Mr. Paradise: Let the witness finish his answer. [87]

A. I am assuming this: If all the pipe on the property goes, and there were an oil field on the property, and there was no exclusion made of that pipe, I would probably assume that that pipe goes too.

Mr. Paradise: I move to strike the answer upon the ground that that is his present assumption, the witness not having had any experience at the time of his negotiations with Mr. McGahan.

A. I am only assuming now if the oil wells at that time would have been on the property, I might have thought that maybe I would have asked a question about them. The way I have always pictured it was an oil field off of the property entirely.

(Deposition of David Zeidenfeld.)

Mr. Paradise: Mr. Krasne is inquiring what was your understanding at the time of these negotiations, and not your surmise based upon anything that has happened since the contract was executed.

Mr. Krasne: I think again my question has been misunderstood, and this witness has impressed upon his mind the indelible fact that Richfield and Aaron Ferer & Sons are presently fighting over some pipe in an oil well. The question in substance and effect is this, and it is not for the moment directed to any pipe or anything whatever which Mr. Paradise referred to as casing in oil wells. I am referring to whatever pipe was on this property, from whatever source, did you or did you not understand that when Mr. [88] McGahan estimated there was approximately 900 tons of pipe on the property, that that was an over-all estimate of whatever kind of pipe happened to be on the property? Isn't that what you understood at that time?

A. I assumed that at that time.

(Short recess.)

Q. By Mr. Krasne: Mr. McGahan didn't tell you, did he, that only the horizontal pipe lines were to be sold, and that any other pipe that happened to be on the property was not to be sold?

A. There was no mention of horizontal or vertical.

Q. As a matter of fact there was no mention of any particular type or kind of pipe, was there?

A. There was maybe once or twice a mention of line pipe, but my assumption was merely an assumption of line pipe on the property.

(Deposition of David Zeidenfeld.)

Mr. Krasne: I move that the latter part of the witness's answer be stricken, as being nonresponsive.

Q. Can you answer the question yes or no, Mr. Zeidenfeld? Read the question again, please.

(Question read by the reporter.)

A. Well, there was a mention of pipe made, on the property, and I was mainly seeking out the tonnage of the pipe that existed on the property, and, as far as the types of lines on the property, I believe that Mr. McGahan did mention the term "line pipe" once or twice to me, but I [89] was not interested in line pipe in general, and line pipe only; I was interested in just terms of tonnages of pipe on the property.

Mr. Paradise: May I have the answer?

(Answer read by the reporter.)

Q. By Mr. Krasne: You have had some discussions with Mr. McGahan the last day or two, have you, with respect to your testimony in this matter?

A. Yes, I was here day before yesterday.

Q. You likewise have had some discussions with me?

A. Yes, I had some discussions with you yesterday.

Q. And you have had some discussions with Mr. Paradise, is that right?

A. I had a discussion with Mr. McGahan and Mr. Paradise.

Mr. Paradise: At the same time?

A. At the same time.

(Deposition of David Zeidenfeld.)

Q. By Mr. Krasne: Was there anything said in your conversations with Mr. McGahan and Mr. Paradise which prompted you to now refer so often to pipe and pipe line?

A. The only way, as far as the pipe being termed a pipe line, was because I myself, in my own mind, had a picture that way. It's not that the property itself might not have had some other lines, be they vertical or horizontal. That I knew nothing about. Pipe line to me could just as well mean pipe line running up or down in an oil well the same way.

Mr. Paradise: I move that the answer be stricken as not [90] responsive to the question.

A. But so far as any discussions between Mr. Paradise and Mr. McGahan and myself, I only tried to tell the truth as I saw it at the time I was speaking to them, and I assure you there was no prompting in this matter.

Q. I am sure you are telling the truth. I don't mean by the asking of my question to impute that you are not trying to tell the truth, but sometimes it is possible that when you are discussing these matters stress is put on a particular thing, like pipe line, and that prompts you to, in your testimony, constantly now refer to it as pipe line, when possibly at the time when you had these discussions with Mr. McGahan in truth and in fact it did not enter your mind, because you did not care; you were only interested in the total tonnage of pipe, and so that is why I now ask you whether anything was said in your discussions with Mr. Paradise and Mr. McGahan in which the question of pipe line has been stressed.

(Deposition of David Zeidenfeld.)

A. The only questions they asked of me, when I was up here, speaking about this word pipe lines, they might have asked me whether or not Mr. McGahan in his conversation with me had brought up pipe lines only going. I did not hear anything like that from Mr. McGahan, but we were just talking in general terms of pipe. I again repeat that the term "pipe lines" is just something that has been in my mind from the start of the deal, which I assumed was lying on the ground, [91] or a few feet underground; but, after all, this deal is like a lot of other deals; you might go on with a certain dealing, and you might think something is so-and-so, and find out that it is different when you go there and inspect it.

Q. Didn't Mr. McGahan and Mr. Paradise, in their discussions with you, explain to you the difference between what they call casing in an oil well, and other kinds of pipe line?

A. They at that time made it clear to me what a casing is, and what a pipe line is, yes.

Q. Actually, before Mr. McGahan and Mr. Paradise, in the last two or three days, made that difference clear to you, the difference between casing in a well and pipe line, you did not have a very definite understanding of the difference in your own mind, did you?

A. I figured that casing could just as well be used for a pipe line as anything else.

Q. And, conversely, pipe line is pipe in any oil well, through which oil is brought up, isn't that it?

(Deposition of David Zeidenfeld.)

A. That's right. I knew of casing being used in an oil well, but I also knew that casing could be used for a pipe line for the transportation of materials horizontally, as well as vertically. I did not have a clear picture in my mind, and they made it clear to me.

Q. Prior to that occasion, the last day or so, when [92] Mr. McGahan and Mr. Paradise made clear to you what is pipe line and what is casing in this business, pipe line and casing in a well was all just pipe?

A. That's right.

Q. It had always been so regarded by you, as pipe, until this difference was made clear to you the last two or three days?

A. That's right, inasmuch as we were in the junk business, we were looking in terms of pipe, whereas, if we had a pipe yard or oil well supply company, we would use the specific terms pipe line and casing. We did not have any reason to use pipe and casing; the only thing in the world was that pipe is anything that has a hole in it and is round.

Q. So, in all fairness to everybody connected with this action, when throughout your testimony today you say that what you had in mind, when Mr. McGahan told you there was approximately 900 tons of pipe on the property, what you had in mind was pipe line—you used the word pipe line in the light of the explanations about pipe line that have been made to you by Mr. Paradise and Mr. McGahan, isn't that correct?

A. Pipe line to me, avoiding the question just a little bit, is anything through which materials are transported, and I assumed in my own mind—I am not assuming what

(Deposition of David Zeidenfeld.)

others thought—when something is brought before you you gather a little picture, and the picture I had in mind was something [93] for the transportation of materials on the level, or a few feet under. That could be casing, or could be line pipe, but so far as casing, you know, that is just line pipe to me. It is all just pipe. I look at it that way. Inasmuch as I had no idea of any oil wells on the field, I could not, in my own mind, get a picture of any such thing as something going up or down. The only picture I could gather was pipe being used for the transportation of oil from the tanks to the refinery, or something of that nature.

Q. One more question and I am through, and I may have asked you this before, but, in any event, what you understood from Mr. McGahan, at the time you had your conversations with him and thereafter, was that the Richfield Oil Corporation wanted to sell whatever pipe, and whatever equipment was on the Casmalia property, except the specific items that they desired to withhold, and which items you were told about?

A. That is what I had in mind.

Mr. Krasne: That is all.

Redirect Examination.

Q. By Mr. Paradise: Mr. Zeidenfeld, Mr. Krasne inquired about a conversation with you, that occurred two days ago in my office, at which Mr. McGahan was also present. I am not sure of what implications Mr. Krasne intended by his question, but will you state exactly what occurred at [94] that meeting?

(Deposition of David Zeidenfeld.)

A. As nearly as I can recollect, Mr. McGahan asked me to come up here to see what I knew about this deal. I did not know anything about any lawsuit between Aaron Ferer & Sons and the Richfield Oil Corporation. I heard something vaguely, about something about to take place, but I had no idea it had gone this far.

Q. You mean you had heard, prior to the time you came to the meeting, that there was a lawsuit in existence?

A. I heard from a few fellows on the street that there was some kind of a lawsuit taking place between them. I figured, inasmuch as nobody called me about it all this time, that you could get along yourselves without me on the deal. So when I was called to come up here, I did not know what it was all about, and the questioning that took place up here was merely something on the same order as the line of questioning here, as to about the time I first called on Mr. McGahan about the deal, and then a little later of how I came to Mr. Ferer, like I spoke about here, about the deal; then all of a sudden Mr. Clements was in the deal, and I was left out entirely. I think you will bear me out on it; if there is anything I don't remember exactly about it, you can prompt me a little, and I can make it clear.

Q. You say that I can prompt you now?

A. If you can prompt me now as to what I might have said, I will bear you out on it, if I said it. [95]

Q. You mean you don't recall exactly what occurred?

(Deposition of David Zeidenfeld.)

A. Outside of that it was just more or less of an idea of how the thing stood from the time of my entering into the conversations with Mr. McGahan up to the deal itself.

Mr. Krasne: May I, just for the purpose of the record, so that I will not be misunderstood, state that I don't for one second mean to convey an impression that either Mr. Paradise or Mr. McGahan would do anything improper, or that anything improper was done in connection with the discussions between them and this witness, nor do I believe that this witness would deliberately make any misstatement to help either side in this litigation; and, except for the implication that, after the discussion which this witness had with Mr. Paradise and Mr. McGahan, in which he learned for the first time the difference between casing in oil wells and pipe lines, that there is, under those circumstances, a possibility, if not a great likelihood, that when the witness now testifies as to what he had in mind about pipe lines and casing, that those opinions, those recollections, would naturally be influenced by the explanations that have been recently made to him.

Mr. Paradise: I will accept Mr. Krasne's statement that nothing improper occurred at the meeting, but I can't accept Mr. Krasne's statement that the witness was told on that occasion, or any other occasion, either by Mr. McGahan [96] or by myself, as to the difference between pipe lines and casing, or what the terms in themselves mean, and I want to explore the matter of this conversation still further, since Mr. Krasne has seen fit to bring it up.

(Deposition of David Zeidenfeld.)

Q. At that meeting, Mr. Zeidenfeld, did anything occur other than questions by myself as to what had happened in your negotiations with Mr. McGahan?

A. Outside of what happened with Mr. McGahan there couldn't have been any more questions about it, because that was the only thing that could have taken place between you and myself, because that was all we had between us, and I never entered into the deal after Mr. Clements and Mr. Ferer got together on it.

Q. Had you ever known me or seen me prior to that conversation?

A. I never saw you before.

Q. Did I suggest, or instruct, or prompt you, in any manner, as to what would be your testimony either at this deposition or in court?

A. No, you didn't.

Q. Did I do anything, other than ask you as to your recollection of this transaction?

A. That's right.

Q. Do you recall, in answer to Mr. Krasne's statement, that you stated that the difference between casing and pipe was made clear to you at that meeting? [97]

A. In this manner: I was referring to pipe in general, and I don't remember whether I asked Mr. McGahan something about it. I was talking about everything in terms of pipe, and I think I mentioned casing once or twice. I don't remember whether it was you and Mr. McGahan told me, or maybe I asked the question, "Now, is casing only in oil wells, or in lines, this way?" It was made clear to me, but there wasn't anything gone into any further as to what constitutes casing or otherwise, outside of that question.

(Deposition of David Zeidenfeld.)

Q. Is it not correct, Mr. Zeidenfeld, that the only mention of either pipe or pipe lines or casing, which occurred at that meeting, was when I asked you what you meant when you referred to pipe line or casing?

A. I told you at that time I figured it all this way, didn't I: I don't remember telling you that casing in my estimation was in oil wells, and I think that somebody made it clear to me that casing is in oil wells only, and line pipe is the other way.

Q. When you say somebody made it clear to you—

A. They didn't go into a full explanation. It was just put to me "You mean casing in a well, don't you?" They made it clear to me that casing was casing in an oil well. It was brought about as I just mentioned. Let us put it this way: Casing was only mentioned to me, as I just said. I was mentioning line pipe, casing and pipe. I [98] think I must have made about five or six references to the same thing, and at one point, either you or Mr. McGahan said "You are referring to casing in the well?" or something of that nature; and from that inference I concluded right there and then—I left the word "casing" out of line pipe from there on, and started using "line pipe," because I figured casing must be in the well, because of the little inference like that. Whether that has any bearing on this I don't see.

Q. Did either Mr. McGahan or myself at that meeting ever instruct you as to the meaning of those terms, or did we merely inquire as to your definition of those terms?

A. It was put to me just like I said before, and I don't think that you gave me a definition of it, but in your little question I sort of got the definition right there and then in my own mind, and started using it the other way.

(Deposition of David Zeidenfeld.)

Q. Had the word "casing" ever been used in your discussion with Mr. McGahan? When I say your discussion with Mr. McGahan, I mean any of your conversations with Mr. McGahan, during the negotiations?

A. That I don't remember.

Q. Do you recall that it either was or was not used? Had you ever heard the word "casing" mentioned in those conversations?

A. I don't recall, and I wouldn't want to say; it's been so long ago. [99]

Q. Isn't it correct that the word "casing" was first used in the conversation in my office two days ago, when you inquired of me what the controversy was between Aaron Ferer & Sons and Richfield Oil Corporation, and I told you that they were suing for the purpose of obtaining the right to remove the casing in the wells on the property? [100]

A. I may have gotten the inference from that or another question you might have asked me pertaining to whether "you mean casing in the well?" I might have asked you something of the same question, but I picked it up pretty quick from there on, and I made up my mind to quit using the word "casing."

Q. I am afraid, in answering me you give a different impression or implication than what you intend to mean. When you say you picked it up pretty quick, do you mean that I either instructed you or prompted you as to what your answer would be either in this deposition or at the time of the trial?

(Deposition of David Zeidenfeld.)

A. No, there was no prompting. It was my own free will. I thought I was coming up here for some kind of dealings of some nature.

Mr. Krasne: I want to say, for the purpose of the record, again, that I am sure Mr. Paradise did not prompt this witness. I want the record itself very clear that I don't suspicion that he prompted the witness. The only point is, that after that kind of a discussion, I think this witness formulated certain impressions; that those impressions crept into the testimony, as if they were impressions dating back to the original discussions, and that in my own mind I think that nothing ulterior was intended. I want the Court Mr. Paradise and Mr. McGahan to know that.

Mr. Paradise: In order that I can bring this part of the inquiry to a close, I presume *you* statement applies [101] equally as well to any part Mr. McGahan had in the same conversation?

Mr. Krasne: Yes, I want the record to so show.

Q. By Mr. Paradise: Is your answer the same with respect to Mr. McGahan's portion of that conversation?

A. My answer is definitely yes; there was no prompting of any nature, and anything that I said was done by myself, without any line of questioning to lead me to believe anything else but what I previously knew, outside of what I picked up for future references, but which did not have anything to do with this, so far as I know.

Q. One further question in that regard: Mr. Krasne, at the conclusion of his examination of you on that subject matter, asked if it was not true that all of your questions and answers with respect to pipe and pipe lines,

(Deposition of David Zeidenfeld.)

which you mentioned in your discussions with Mr. McGahan and with Mr. Ferer, should not be read in the light of the conversation that you had in my office, where the difference between casing and pipe or pipe lines was made clear to you. By your answer to Mr. Krasne's question did you intend to change in any respect any of the answers that you made to any of the previous questions on those subject matters?

A. Can I have read the question Mr. Krasne gave me? It might be I misunderstood the question, and gave an answer I shouldn't have given.

Mr. Paradise: Yes, I would like to clear that matter up. [102]

(The following question was read by the reporter: "Q.—So, in all fairness to everybody connected with this action, when throughout your testimony today you say that what you had in mind, when Mr. McGahan told you there was approximately 900 tons of pipe on the property, what you had in mind was pipe line—you used the word pipe line in the light of the explanations about pipe line that have been made to you by Mr. Paradise and Mr. McGahan, isn't that correct?")

Mr. Paradise: I think it would be clearing the record if that question would be repeated here as having been again read to the witness.

Mr. Krasne: Read it to him again, if you like. I think the question was a fair, intelligible and proper question, and I think the witness' answer is truthful and correct, particularly in the light of the few questions I asked that preceded that question.

(Deposition of David Zeidenfeld.)

Mr. Paradise: I would like to have the record repeated, that particular question as well as Mr. Zeidenfeld's answer to it.

Mr. Krasne: Again, so that the record will be clear, do I understand that counsel is trying to impeach the credibility of his own witness here, or for what purpose counsel is asking this question? The question has been asked and answered.

Mr. Paradise: This is not for the purpose of impeachment. [103] This is for the purpose of clearing up the witness' entire line of testimony, and particularly in answer to Mr. Krasne's questions as to what occurred at the conversation between Mr. McGahan, Mr. Zeidenfeld and myself two days before this deposition occurred. Will the reporter re-read to the witness both the question and the answer to which we have referred?

(The reporter here read question and answer appearing on page 93, line 14, to and including page 94, line 9.)

Q. By Mr. Paradise: By your answer to that question of Mr. Krasne, did you intend, Mr. Zeidenfeld, to change any of the testimony that you have previously given regarding your conversations with Mr. McGahan and Mr. Ferer, or your understanding at the time of those negotiations, as to what particular items of equipment were being sold?

A. I can only maintain that I still had no knowledge of oil wells on the property, and that all pipe that was being sold was pipe that was up on the surface, or a few feet beneath the surface, on a horizontal plane, with the exception of maybe a few vertical pieces being used in the refinery, going up and down a tank, and that was about all.

(Deposition of David Zeidenfeld.)

Q. Has your testimony been changed or colored or altered in any respect as to what your recollection of those negotiations was, and as to what your recollection of your understanding at that time was, by any conversation that occurred between you and Mr. McGahan and myself two days ago? [104]

A. No, it has not.

Q. In answer to one of Mr. Krasne's questions, I think you stated that Mr. McGahan said that there was approximately 900 tons of pipe, and you assumed that that was all kinds of pipe that were upon the property, is that correct?

A. I assumed it was all kinds of pipe on the property.

Q. At that time did you have any notion or knowledge whatsoever that there was any pipe on the property other than pipe lines and interconnecting lines around the refinery?

A. I had no idea otherwise.

Q. And when you have mentioned that you intended to get all vertical pipe lines there were on the property, have you reference to anything other than the pipes that are running in a vertical direction up and down the tanks, above the surface of the ground, around the refinery?

A. In my own mind I did not picture it as anything outside of what you have just asked me.

Q. Did Mr. McGahan ever state to you that everything on the property goes with certain exceptions?

A. I assumed that.

Q. Did he ever state that?

A. I don't recall that he stated that. I recall this: That he told me to go up and look at the property, and

(Deposition of David Zeidenfeld.)

see Mr. Duncan, and he will show me exactly what goes on the property, but to leave those things out of it I did not see, [105] for the time being. He said "Just leave those items." He gave me a little list not to figure on at all, because O. C. Field and some other people had something to do with them.

Q. Did Mr. McGahan state that with the exception of those items everything else on the property goes?

A. I assumed everything else goes.

Q. You assumed that, or did Mr. McGahan state that?

A. I don't recall exactly whether he stated it or not, but from the method of dealings with him, and giving me a few exceptions that don't go, I would naturally assume that everything else went, although I had no knowledge of anything that was on the property outside of pipe lines in general; and by the term "pipe lines" don't misunderstand the fact that I am just using this; I have always referred to pipe running this way, running horizontal, as a pipe line.

Q. Did Mr. McGahan use the words "pipe line" or "line pipe" in his conversations with you?

A. I think I answered that question before some two or three times, didn't I?

Q. Your answer is—

A. He might have mentioned it once or twice in the dealings, but there wasn't too much discussion, and after all, in a discussion you can't remember every word that goes on. There might have been other things mentioned that I don't even think about, because they are unimportant

(Deposition of David Zeidenfeld.)

[106] to me, because I am only interested, as I have repeatedly stated in this deposition, what I was mainly interested in was tonnage of pipe, or tonnage of steel.

Q. Is it your recollection then that when you testified that everything on the property goes, that that was merely your assumption, and not anything that Mr. McGahan ever said to you?

A. He might have mentioned it, and still again, I might have assumed in my own mind, and built up the story myself.

Q. But you don't recall that he ever stated it, is that correct? A. He might have stated it.

Q. Do you have any recollection either that he did or did not?

A. It is too long to remember. I wouldn't want to say, being under oath, that I do remember when I don't.

Mr. Paradise: That is all.

Recross-Examination

Q. By Mr. Krasne: You assumed that everything except the specifically excluded items, were to be sold in the same manner that you assumed because of something that you pictured in your mind, that all the pipe on the property was the pipe lines, isn't that so?

A. I assumed that all pipe on the property would go. [107] It was mostly referred to in the conversation between Mr. McGahan and myself as pipe on the property.

Q. In any event, whether, from what Mr. McGahan said to you or not, when you left his office you left with the belief in your own mind, did you not, that the Richfield

(Deposition of David Zeidenfeld.)

Oil Corporation intended to sell all of the pipe and all of the equipment that they had on the Casmalia property, except for the items which they specifically excluded?

A. That was my assumption.

Mr. Krasne: That is all.

Mr. Paradise: That is all.

David Zeidenfeld. [108]

[Certificate of Notary] Endorsed: Filed Feb. 23, 1942. [109]

In the District Court of the United States for the Southern District of California, Central Division.

Aaron Ferer & Sons, a copartnership, Plaintiff, vs. Richfield Oil Corporation, defendant. No. 1718-H.

Depositions of T. H. Clements and Morris Ferer, witnesses produced, pursuant to the written notice on file herein and the oral stipulation of counsel for the respective parties, on behalf of the defendant in the above-entitled action, now pending in said court, before Ross Reynolds, a Notary Public in and for the County of Los Angeles, State of California, in Room 1221 Richfield Building, 555 South Flower Street, Los Angeles, California, on Friday, February 6, 1942, commencing at the hour of 10 o'clock a. m., and on Saturday, February 7, 1942, commencing at the hour of 10:30 o'clock a. m.

Present:

Philip N. Krasne, Esq., and Carl Sturzenacker, Esq., for Plaintiff.

Robert E. Paradise, Esq., for Defendant. [1*]

*Page number appearing at foot of original depositions.

T. H. CLEMENTS,

a witness called by the defendant, being first duly sworn.
testified as follows:

Direct Examination

Q. By Mr. Paradise: Where is your business address, Mr. Clements?

A. 8330 Atlantic Boulevard, Bell, California.

Q. And what is the nature of your business?

A. I am a second-hand dealer in machinery, pipe, valves and so forth.

Q. What is the name of your company?

A. Refinery Equipment Company.

Q. Are you the sole owner of it?

A. I am the sole owner. In other words, I am running it under that name as a d. b. a.

Q. Do you buy and sell junk equipment of any sort?

A. Yes; I not only buy and sell but then I do a lot of salvage work, tearing down plants and that sort of thing to get salvage equipment to be able to recondition it and sell it.

Q. You do the work of abandoning and salvaging and then resell it, is that right? A. That is right.

Q. How long have you been acquainted with Mr. Morris Ferer? [2]

A. About a year and a half. I would say.

Q. I meant to ask you in connection with that other point, do you specialize in any particular type of oil well equipment? Do you specialize in refinery equipment?

(Deposition of T. H. Clements.)

A. That depends. In other words, it is a catch as catch can in our business. We not only sell to refineries but we sell to producing companies and to chemical manufacturing companies, asphalt plants and lube reclaiming plants. It is a most general industry, you might say.

Q. Is the type of equipment you handle refinery equipment or is it producing equipment?

A. Well, we handle some of all of it, as far as that goes.

Q. Is Aaron Ferer & Sons a competitor of yours? Are you engaged in exactly the same types of business?

A. Well, Aaron Ferer is relatively a new company here. They came in with the primary object of being junk dealers and then they have since branched out into salvage work, which is more or less competitive to my work, you might say.

Q. In this transaction between Aaron Ferer & Sons and the Richfield Oil Corporation, did you have any interest in that transaction?

A. My interest lay—or, in other words, you might say I was a promoter. For many years prior to the time that this deal came up, I had been salvaging plants incidentally and similar layouts and incidentally I had salvaged two or [3] three plants for the Richfield Oil Company prior to this instance.

Q. What was your exact connection in this transaction? Did you have a share in the profits?

A. The profits only. Yes; it was profit-sharing. In other words, you might say I was a promoter of the deal.

(Deposition of T. H. Clements.)

Q. Did you get a commission from Aaron Ferer & Sons?

A. No; no commission. I was to get a percentage, as a matter of fact, $33\frac{1}{3}$ per cent, of the net profits after the deal was all consummated and all the profits were in.

Q. Did you have a written contract with Aaron Ferer & Sons? A. It was verbal.

Q. With whom did you make that?

A. Mr. Aaron Ferer, or I mean Mr. Morris Ferer.

Q. And what percentage did you say you were to get?

A. $33\frac{1}{3}$ per cent of the net profits.

Q. Were you to put up any of the capital required for the payment of costs of salvage?

A. No. What I did was this. I had a crew organized in the fields for salvage work and I put my crew up there and, incidentally, in the transaction I also had to put my equipment trucks and rigging equipment and materials like that up there, and my services in the removal of the equipment and in the sales of that equipment, for which I received no recompense other than an interest in the net [4] profits.

Q. Did you charge Aaron Ferer & Sons for the use of that equipment and crew?

A. Not any equipment. There was no charge made for the equipment, either trucks or that sort of material. And my crew, instead of being carried on my payroll, were transferred and carried on Mr. Ferer's payroll and it was to all appearances his men. They were carried on his payroll there during the interval of the job and he carried the compensation insurance and other liabilities.

(Deposition of T. H. Clements.)

Q. He was to pay all of the cash charges and costs, is that correct?

A. All of the cash charges and costs; yes.

Q. And you furnished the equipment, without making any charge?

A. Yes. And I spent two or three days a week up there at the job, supervising more or less the removal of the equipment. And at the same time, when I was back in Los Angeles, better than half of my time was actually engaged in the sale of the merchandise as fast as we removed it and other things incidental to it.

Q. Did you make the sales or were the sales made by Aaron Ferer & Sons, the sales of the salvaged equipment?

A. I made them all myself but they were sold across their sales sheets. In other words, I was merely acting for them. In other words, all of the sales were made by Aaron [5] Ferer & Sons and so written on all of the delivery tickets, receipts, invoices and so forth.

Q. What equipment did you furnish?

A. I supplied three trucks—one of them was a winch truck—and cables and tools and general salvage equipment, tackle and materials like that.

Mr. Paradise: I might state for the purpose of the record that it was my understanding that, by the order of Judge Hollzer, that I think was made on December 3rd, where it required the production of certain documents to be used at the taking of this deposition, it would be unnecessary to serve a subpoena for those and that, under an agreement between Mr. Krasne and myself, the production by stipulation would have the same effect as if the documents were subpoenaed. Is that correct?

(Deposition of T. H. Clements.)

Mr. Krasne: Yes; that is correct.

Q. By Mr. Paradise: Mr. Clements, the order of court to which I have just referred required the production at the time of the taking of this deposition of various documents. Have you read the order of court?

A. No, sir.

Q. I will read the documents that were required to be brought here. This is Item (a) of the order: "All written memoranda, records, tabulations, estimates and correspondence, prepared during the years 1940 and 1941, by Morris Ferer, T. H. Clements and Aaron Ferer & Sons, or by any of their [6] employees or agents, pertaining to the purchase by Aaron Ferer & Sons of facilities and equipment from Richfield Oil Corporation or pertaining to facilities and equipment to be purchased by Aaron Ferer & Sons from Richfield Oil Corporation." What documents have you brought under that provision of the order?

A. I haven't any. Mr. Krasne asked if I had any documents and I told him no, we had no correspondence as the Refinery Equipment Company or as T. H. Clements, an individual. I helped Mr. Ferer prepare, I believe, one of the original letters of the original proposal of purchase but then I never had any correspondence with Mr. Ferer or with the Richfield myself on this transaction.

Q. You never did what?

A. I never had any direct correspondence myself with the Richfield on this transaction.

Q. Did you prepare any memoranda concerning this purchase? A. Oh, no.

(Deposition of T. H. Clements.)

Q. You made no written memoranda of any nature at the time of the negotiations, is that correct?

A. No; that is correct.

Q. Do you have any records that were made before this contract was signed, relating either to the purchase or relating to the property that was to be purchased?

A. No.

Q. You made no record of any sort? A. No.

Q. Did you make any tabulations of the property that was to be purchased? A. No.

Q. Did you make any estimates of the amount that was to be offered for this equipment?

A. If I did, I made them on my cuff, you might say, or on scratch paper that was thrown away at the time. I never retained any. There is nothing in my files now.

Q. You have nothing now that you made?

A. No.

Q. Have you searched your files on that?

A. Yes; I went back and checked them after Mr. Krasne called me yesterday, and I have nothing at all.

Q. Do you have any correspondence, either with Aaron Ferer & Sons or Richfield—or I will eliminate Richfield in the light of our conversation with Judge Hollzer. Do you have any correspondence with Aaron Ferer & Sons relating to this purchase?

A. No. It was all verbal at the time. There was no written correspondence.

(Deposition of T. H. Clements.)

Q. The second item, Item (b) in the order of court, was to require you to bring to this deposition all written memoranda, records, tabulations, estimates and correspondence, prepared during the years 1940 and 1941, by Morris Ferer, [8] T. H. Clements and Aaron Ferer & Sons, or by any of their employees or agents, and used by them in estimating the price of \$22,000 offered to Richfield Oil Corporation by Aaron Ferer & Sons as the purchase price for such facilities and equipment. Have you brought any documents under that provision of the order?

A. No; I have no documents.

Q. You made no memoranda of your estimates of this purchase?

A. No.

Q. And no records or tabulations or instruments or correspondence, is that correct?

A. Not a thing.

Q. You have nothing of any sort?

A. No.

Q. Have you made a search for documents of that sort?

A. Yes.

Q. What did you search?

A. My files.

Q. Your office files?

A. That is correct.

Q. Would you have any such similar documents any place other than in your office?

A. No.

Q. Item (c) of the order is to produce copies of all logs and histories and drillers' reports or records of or [9] pertaining to any wells located upon the land of Richfield Oil Corporation, described in the contract dated January 17, 1941, attached to the amended complaint herein. I understand you do have documents of that nature, is that correct?

(Deposition of T. H. Clements.)

A. I have the log books and I have the maps and the well profile maps.

Mr. Paradise: I might state for the record that, under an arrangement with Mr. Krasne, those were not required to be brought this morning.

Mr. Krasne: That is right.

Q. By Mr. Paradise: You say you have the log books. And what else?

A. Not only the log books but the profile maps made from those log books.

Q. Made by whom? Do you know? Were they made by you?

A. Oh, definitely not. They were made years ago by the geologists up there on the lease.

Q. Do you have the histories of the wells?

A. Yes.

Q. For what period?

A. That is included in the log books which show every well as far as I remember and a complete log of the drilling of each well.

Q. That is up to what date? Is that up to the date of the completion of the well as a producing oil well? [10]

A. Yes. Not only that but we have got the records—I don't know just how complete they are—as to the production of the wells after they were completed.

Q. Do you have the records of what was done to the wells subsequent to the completion of any of the redrilling work?

A. Yes.

(Deposition of T. H. Clements.)

Q. Or plugging back operations?

A. Yes; plugging back operations. That is included in these log books.

Q. Where did you get these records?

A. They were in the geologist's room in the production building, I would call it, up on the Soladino lease.

Q. Those were kept locked up in one of the warehouses, were they not?

A. They were not locked. It was in a warehouse which at various times was open. In other words, several times I had strolled in there and once or twice I noticed it was locked. Sometimes it was locked and sometimes it wasn't. It was an office larger than this office and they were around the wall there on shelves.

Q. You have those now at what point?

A. They are in my safety vault, fire vault, at my place at the Refinery Equipment Company, 8330 Atlantic Boulevard.

Q. When were they shipped to your office? [11]

A. We had two or three engineers or well pullers look at them up there, I believe it was, in May or June of last year.

Q. That is, 1941?

A. Yes. And then we thought we would bring them down here so we could cross-reference them and probably get some more ideas from probably some other source down here at that time we brought them down.

(Deposition of T. H. Clements.)

Q. When was that? Can you fix the time when you brought them down?

A. Around the 1st of June, 1941.

Q. When was the first time you saw those logs, Mr. Clements?

A. That rolls back the years quite a few years. I was in Santa Maria when they were drilling those wells originally and at that time I worked for the Union Oil Company at Orcutt, which was only three or four or five miles away.

Q. I am not talking about the original making of the records. I am talking about the records that were stored in the warehouse.

A. That is what I am talking about. I was in the building at the time. It was quite a drafting office. And I saw some log books being made at the time because I was acquainted with some of the men at the time there at the lease. [12]

Q. I didn't hear you.

A. I was acquainted with some of the men at the lease in those days. I have covered that territory buying and selling for years. And I guess I saw them again about four or five years ago when I was going through the property and looking it over.

Q. Four or five years ago? A. Yes.

Q. Before there was any thought of abandoning the property, is that correct?

A. Well, before they had any authorization to abandon it, I had been after Mr. McGahan for several years, trying to purchase that stuff up there.

(Deposition of T. H. Clements.)

Q. Those records were all stored in a warehouse, you say?
A. Yes.

Q. Did you examine those records prior to the time when this deal was consummated and did you examine them in the warehouse?

A. Casually. In other words, I didn't go through every one. I checked some of the wells over at that time.

Q. When was that?

A. I would say four or five years ago.

Q. But during the time that the negotiations for this contract were going on, you did not examine them, isn't that correct? [13]
A. That is right.

Q. And the first time you saw those logs was after this transaction was consummated and the contract was signed and after you had commenced doing work on the dismantling, is that correct?

A. No. That question is ambiguous. That isn't the first time I had seen them. I had seen them previous to that.

Q. That was the first time you saw them in connection with this transaction between Aaron Ferer & Sons and Richfield, however, is that correct?
A. Oh, yes.

Q. What was the first work that was done on the contract, or I mean on this job, after the contract was signed?

A. Well, you might say we started digging ditches more than anything else, on account of the weather. We couldn't get on the property on account of the rains.

(Deposition of T. H. Clements.)

Q. The date of the contract was January 17, 1941?

A. Yes.

Q. How soon did you commence work after that date?

A. I would say within a week or ten days.

Q. It was some time after that that you dismantled the building or warehouse in which these records were kept, is that correct?

A. We didn't dismantle that until around June or the last of May; May or June. As a matter of fact, we had to [14] keep those buildings there for the men to go in to get out of the rain. It was raining there three or four months practically solid and it handicapped us.

Q. When was the first time you examined those records after this contract was signed?

A. Within about a week, when I went up with a crew. I went over those records pretty thoroughly at that time.

Q. That was about a week after the contract was signed?

A. That is right.

Q. But I understood you to say that prior to this time the contract was signed you had not examined them for four or five years?

A. That is right.

Q. I suppose you knew nothing as to any work that had been done on any of those wells in that five-year period?

A. Oh, yes. I had been over the lease several times in that last five years and about a year prior to the time that this came up they had gone in there and taken down the derricks that had fallen over and removed all of the drilling equipment, you might say, on the surface.

(Deposition of T. H. Clements.)

Q. Did you watch that operation taking place?

A. I wasn't there when it was done. They were doing some clean-up work the last time I was there, burning up a lot of old derrick timber and so forth, but they had removed the steel and the pipe and so forth. [15]

Q. When was that?

A. I would say that was in the midsummer of 1940.

Q. During the summer of 1940? A. Yes.

Q. Did you watch the work progressing?

A. Well, as I say, at the time I had seen it they had removed all these old steam engines and all of the old drilling equipment, most of the drilling equipment that was capable of being removed. That had been pretty much removed when I was there. They were cleaning up and hauling off timber.

Q. Were they doing any work on any of the wells when you were up there at that time?

A. I didn't see any.

Q. What was the occasion for your trip up there at that time?

A. I cover that territory all the time through there. I make periodic sales trips, you might say, over to the O. C. Fields Casmite plant and then I used to come down and make sales trips, at the foot of the canyon in there, to the Black's Incorporated plant.

Q. You were just examining the territory to see what was occurring, is that correct?

(Deposition of T. H. Clements.)

A. Not only that but also trying to sell equipment, pipe, valves, fittings, tanks, or whatever they wanted.

Q. At that time you say the derricks had already been [16] removed and the tubing had been removed from the wells, did you say?

A. Well, the surface or sucker rods and crown blocks and all of that sort of thing had been hauled off.

Q. Do you know whether any tubing had been removed from the wells at that time?

A. I couldn't tell but I had talked to them around along the avenue there at Santa Maria and found they had pulled part of the production piping.

Q. When you refer to the production piping, do you mean tubing? A. Production strings.

Q. Did you know at that time whether those wells had been abandoned?

A. I had asked over there and they told me they had and they just pulled the strings.

Q. Who did you ask?

A. Some of the drillers along the avenue; either that or over at O. C. Fields or some place around there.

Q. Did you ask any Richfield employees?

A. I never talked to any Richfield employees.

Q. What did the wells look like when you saw them?

A. At what time?

Q. At that time, after the derricks had been pulled.

(Deposition of T. H. Clements.)

A. The pipe was stubbed up, with the stub sticking out of the ground at various heights, three or four or five [17] feet high.

Q. It was capped, was it?

A. It was stubbed and capped with a cast iron cap.

Mr. Paradise: For the purpose of the record I want to move before we go further to strike the witness's answers as to his conversations with any persons, other than employees of the Richfield Corporation, on the ground that they are hearsay.

Q. What was your first knowledge, Mr. Clements, of Richfield's desire to sell equipment and facilities from that property? When was the first time you learned of that?

A. It had been under discussion three or four years both by the salvage division at Long Beach, under McGahan, and also by Mr. Harold Davis, who I was buying equipment through from time to time. It had been discussed by all of us on various occasions and at that time they had said they were trying to get releasement from the various departments so that that equipment up there could be sold.

Q. Mr. Davis is the assistant purchasing manager of the Richfield Oil Corporation, to identify him?

A. I believe that is his title. I don't know.

Q. Did he notify you that Richfield was ready to make this sale?

A. I don't remember whether it came from him. Yes; I believe it was. I was talking to him and he said that he

(Deposition of T. H. Clements.)

was having McGahan make an inventory figure or valuation and [18] in the near future, after a lot of the procedure had been gone through, they would be willing to take bids on that material.

Q. He phoned you and told you that, did he?

A. No. I think that took place when I was in his office on some other matters.

Q. Do you recall when that occurred?

A. I would say that was around September of 1940.

Q. Did Mr. Davis subsequently tell you that Richfield was then in a position to make the sale and request you to submit a bid on it?

A. I believe some time in November he phoned me or that when I was talking to him over the phone he told me to contact McGahan because McGahan was getting down to the point where they would be willing to talk business pretty quickly.

Q. What was the next conversation that you had?

A. With whom?

Q. With any Richfield employee, concerning this purchase. As I understand it from your answer, and is this correct, at that time of that conversation you just mentioned, Richfield was not yet in a position to make the sale and you would be notified later, is that correct?

A. At that time they had gotten to the position where they were making an inventory set-up so that they could take it up both with the manufacturing and the production [19] divisions about the retirement of this material.

(Deposition of T. H. Clements.)

That was, as I say, in September. Of course, I was calling on McGahan about every week or so down there and then I was pretty much in contact with Mr. Davis. So I can't place which time the next conversation took place.

Q. Can you fix the time when the transaction was ready to be bid upon and with whom you had a conversation, with what Richfield employee?

A. The last step was when Mr. Davis told me to get in contact with McGahan and that McGahan would be calling for bids very shortly. I think that was the general context of the conversation.

Q. Was that all that was said?

A. That is all I recall.

Q. Did Mr. Davis outline to you the particular facilities and equipment that were to be sold in that conversation?

A. No. As a matter of fact, at that time I don't believe they knew what they wanted to let go; that the thing was more or less indefinite and hazy.

Mr. Paradise: I move to strike that as a conclusion of the witness.

A. Well, that is the impression I got.

Q. Just state, Mr. Clements, what was said to you rather than what you thought. Then what occurred? Did you talk to McGahan? [20]

A. Yes; I talked to McGahan.

Q. Where did that conversation take place? Was it in the Richfield office?

(Deposition of T. H. Clements.)

A. In his Long Beach salvage office.

Q. And will you state what occurred? Were there just the two of you present?

A. Yes. I don't remember of talking with him in front of anyone else.

Q. And can you fix the time of that conversation?

A. Well, it was, I imagine, around the 1st of December of 1940.

Q. What was said as closely as you remember?

A. He said that I had better go up there and take another look at it; that they would call for bids pretty quick. And I remember at the time asking him if there was any deadline on it and, as I recall, he said there was no definite deadline, although I wouldn't take oath to that remark. And when it came to that point, then, of course, I knew it involved more money than I had and then I started looking around to see who I could get to help underwrite it.

Q. Was there any statement by Mr. McGahan as to what facilities and equipment Richfield was willing to sell?

A. As I recall, he said he wanted to sell everything with the exception of six big storage tanks and some other equipment which had been previously sold or was under process of being sold at the time. [21]

Q. Did he say that any tanks were to be left on the property, that were not to be sold?

(Deposition of T. H. Clements.)

A. Yes. He particularly emphasized all through the conversation that they were to withhold from the sale six big steel storage tanks.

Q. Did he say why he wanted to retain those?

A. Yes. He said the production department were figuring on taking them and using them over at Maricopa.

Q. What was the size of those tanks? Do you recall?

A. I believe there were two or three 37500s and the others were around 55000-barrel tanks. There were six altogether.

Q. Did Mr. McGahan have an inventory of the equipment and facilities to be sold?

A. I didn't see any.

Q. He didn't show you any? A. No.

Q. What else occurred in that conversation?

A. That is all I remember pertaining to this.

Q. What occurred next? Did you then make a trip up to Casmite and inspect the property?

A. What occurred next is I called on Mr. Ferer and asked Mr. Ferer if he would be interested in going in on that deal, and he said yes, he would be interested and he would like to look into it. So I made an appointment and we jointly went up to Santa Maria or, rather, to Casmalia and [22] looked over the holdings there.

Q. Any examination that you made of the property before that time was not for the purpose of purchasing or for making a bid on this particular transaction, is that correct?

(Deposition of T. H. Clements.)

A. Oh, yes; I did. In other words, as a matter of fact, I had been trying at various times to buy a lot of the material and equipment out of that property from the Richfield. I made several stabs at that.

Q. Had you ever bought any?

A. Not at that location but—

Q. I mean at that location. A. No.

Q. At this examination that you made with Mr. Ferer, who were present?

A. Just Mr. Ferer and myself.

Q. Just the two of you? A. Yes, sir.

Q. When did that occur?

A. Oh, I would fix the time about the middle of December of 1940, in that neighborhood. I may be off on the dates, but, as I recall, it was the early part of December or somewhere in there.

Q. Did any Richfield employee inspect the property with you? A. No. [23]

Q. The two of you walked over the property alone?

A. That is right.

Q. What did you examine and how extensive was your examination?

A. We spent practically a whole day there looking it over.

Q. The land covers about how much space?

A. It is about a mile one way and a mile and a half the other.

(Deposition of T. H. Clements.)

Q. Will you describe the examination that you made? What did you do?

A. I forgot to mention that Mr. McGahan had told me that there was a map of the whole property there at the caretaker's house. So, when Mr. Ferer and I went up there that day, we went up to the house and asked for and obtained this map.

Q. Do you know the name of the man with whom you talked?

A. He is that fellow that has been up there and is still there.

Q. Was it Mr. Duncan?

A. That is right, Duncan.

Q. Did he go over the property with you?

A. Only in this respect, that he went with us over to the refinery site across the canyon and opened up some boiler houses and some locked-up buildings like the compressor [24] building and the warehouse and the enclosure underneath the condenser boxes. I believe they were padlocked at the time.

Q. Then did he stay with you during the balance of your examination? A. No.

Q. He left? A. Yes.

Q. Did you examine the various tanks?

A. Yes: during the day's period we examined practically everything we could catch up with.

Q. What was the purpose of your examination?

(Deposition of T. H. Clements.)

A. To arrive at an estimate of how much we would offer.

Q. What were you interested particularly in?

A. In any and everything.

Q. Did you make any estimate of the tonnage of the material to be removed?

A. Yes; we made an estimate. I think we broke it down into steel plate and into pipe and scrap and the buildings.

Q. What was your estimate of the tonnage of metal to be taken off of the property?

A. I forget right now. I couldn't answer you on that.

Q. Did you make any memorandum of that?

A. We scribbled it down at the time but I didn't retain any copy of it. I don't know whether Mr. Ferer did [25] or not.

Q. How did you go about it? Would you look at a tank and estimate the tonnage involved in that tank?

A. That is right.

Q. And in the stills? A. Yes; that is right.

Q. And in the boilers and engines?

A. Yes; that is correct.

Q. Do you have any recollection at all of the tonnage that you estimated?

A. I can't remember it now.

Q. Do you have any recollection within any limits of a minimum or a maximum?

(Deposition of T. H. Clements.)

A. No, because we were breaking it down at the time, as I say, into pipe and plate and various items and we were setting up different valuations for different commodities.

Q. You mean you were not valuing all of the material at the same price? A. Oh, no.

Q. What value were you placing on the steel plate?

A. As I recall, we figured the steel plate in place there worth around \$15 a ton as I remember.

Q. How much? A. \$15 a ton.

Q. And what was the source of that steel plate? Where would you get that steel plate from? Perhaps my question isn't clear. What equipment on the property would [26] be that steel plate?

A. Condenser boxes, steel walkways, jacketing around the pipe stills and, as I recall, we also included in the steel plate figure the shells of the boilers which we did not figure would be usable as boilers and we considered the tubes in the boilers as pipe.

Q. What was the quantity of steel plate? Or does that include all the types of steel plate you were figuring on? A. Yes.

Q. What was the approximate quantity of that that you estimated?

A. I have forgotten. I can't give it to you exactly.

Q. That was your purpose in making the examination, wasn't it, to make an estimate?

A. Yes. We made it at the time but I don't retain that figure now.

(Deposition of T. H. Clements.)

Q. That was an important feature to you, wasn't it?

Mr. Krasne: Just a minute. I object to that on the ground it is argumentative. The witness has answered that he doesn't remember.

Q. By Mr. Paradise: Do you recall the over-all tonnage that you estimated? I am not asking you to make a calculation now based upon anything since the things were removed but what your recollection is of the estimate that you made at that time. [27]

A. As I recall, we made an over-all tonnage estimate out there of around 6,000 tons.

Q. 6,000 tons?

A. Something of that type, six or seven thousand; and I think we even went so far as to get a rail rate from the railroad based on that probable tonnage.

Mr. Krasne: Is that tonnage of everything?

A. I am assuming that included everything, from the context of his question.

Q. By Mr. Paradise: I am referring, Mr. Clements, to the tonnage of the material other than wood that you would take off. A. Yes.

Q. I didn't intend that you include in that any of these buildings.

A. No. I didn't include that. In other words, I was figuring on materials that would have to be hauled in to Los Angeles, in the way of pipe and steel and materials like that.

Q. Metal material?

A. Metal material.

(Deposition of T. H. Clements.)

Q. That you were taking out for salvage purposes?

A. That is right.

Q. And you figured that at 6,000 tons?

A. Something like that.

Q. You say you made an inquiry of the railroad company [28] for the purpose of getting railroad rates. Do you have correspondence with the railroad company on that?

A. I didn't handle that correspondence. Mr. Ferer did.

Q. What were the other items besides the steel plate that you were examining for the purpose of estimating tonnage? Or, by the way, before you answer that question, did you use other factors in determining your estimate other than tonnage or was tonnage the sole factor you were interested in?

A. In the salvage business we reduce practically everything back to a tonnage figure.

Q. Now will you answer the preceding question as to what other items you were examining other than the steel plate?

A. We examined, for instance, the scrap, the scrap cable, and the buildings and pipe lines.

Q. Before you get to the buildings, will you describe the scrap and scrap cable? Where was it?

A. There was steel scrap over the premises but there was steel cable, a mountain of that, laying along the main creek bed there, about 10 feet high.

(Deposition of T. H. Clements.)

Q. How much did you estimate in tons was the quantity of steel in that scrap pile you mentioned?

A. I have forgotten. Then we checked over the various boiler houses. There were six or seven boiler buildings [29] scattered over the premises and we checked the pipe in the condenser boxes and the pipe stills. We checked over the various wells on the property and estimated the probable pipe we could remove in the salvage of those wells. We checked over even the scrap which could be removed in the form of revetements and retaining walls and we estimated the value of the storage tanks.

Q. When you say value, are you talking now about money or tonnage?

A. Those tanks we didn't consider in the form of tonnage because you couldn't cut them up and remove them to Los Angeles because most of them were corrugated. We were considering what we might be able to sell them for locally. And we were also trying to take into consideration the value of any oil in those tanks. We checked over the various pipe lines over the property and tried to figure out the sizes and the tonnage of that pipe.

Q. What was the length of those lines?

A. There were lines running every conceivable direction across the property. So that is a pretty difficult question to answer.

Q. From the map that you had, did you estimate the distance in feet or in miles of the various lines?

A. Yes; that is right, and we just converted them over into tonnage.

(Deposition of T. H. Clements.)

Q. Do you recall the distance of those lines? [30]

A. I don't recall. In other words, I know there were some lines there, just scores and scores of lines, which would run three and four thousand feet in length.

Q. How would you estimate the tonnage in those lines?

A. By checking the size of the line and its probable weight per foot.

Q. What size were the lines?

A. There was more 4-inch lines than any other size, and those 4-inch lines, instead of being standard line pipe, were mostly bastard oversize lines, 5 inches or something like that.

Q. There were some large lines on the property, large pipe lines, that also had a steam line in connection with them, were there not?

A. Practically every line on the property had what we call a gut line through it by which the oil could be handled and moved, and the size of the gut line depended on the size of the outer pipe. There were a lot of lines 8 and some even 10 inches in size which had 2-inch gut lines in them and the 4-inch lines mostly had 1-inch gut lines and then the smaller lines had half-inch gut lines as I remember.

Q. What estimate of the tonnage of the pipe lines did you consider? A. What was that question?

Q. I say what did you estimate to be the tonnage of the pipe lines? [31]

(Deposition of T. H. Clements.)

A. Oh, I have forgotten. We pooled the whole thing together. In this estimate we were also including the flues from the boilers, for instance.

Q. Did you put a different valuation on those pipe lines than you did on the steel plate, from a valuation standpoint?

A. I have forgotten what base figure we set on them now.

Q. Was steel plate more or less valuable than those pipe lines?

A. It seems to me that the plate was at a little better premium than the pipe line, although I won't take oath to it now because market conditions have changed.

Q. You mentioned that your over-all estimate of the amount of tonnage was 6,000 tons, is that correct?

A. I may be wrong in that but that is just my remembrance of it, although I may be wrong.

Q. Is that your best recollection of the over-all tonnage?

A. That is my estimate or that is my remembrance of it.

Q. What proportion or what fraction of that represented the pipe lines?

A. I wouldn't know. I can't answer you on that.

Q. Was it a third or a half? Do you recall what fraction? [32]

A. I wouldn't even venture an estimate.

Q. Did you make any written notes at the time?

(Deposition of T. H. Clements.)

A. We scribbled on some scratch paper at the time but I didn't retain any written memorandum of it.

Q. You have no recollection at all of the tonnages, within reasonable margins, of what you estimated at that time? A. No.

(Short recess.)

Q. When you mentioned this scrap pile, I think you also said something about other loose metal on the property. Will you describe that, Mr. Clements?

A. Well, when we made up our estimate, of course, we figured two extremes, our minimum recovery of metal and our maximum.

Q. What were those extremes?

A. As I recall, we figured that possibly we wouldn't get over a minimum of 3,000 or 3,500 tons of metal and our top figure would be about 6,000 as I remember. And that would be the same thing when we would estimate some of the pipe. For instance, on a pipe line, some of that pipe would have to go into scrap and not into usable merchandise.

Q. Do you mean when you arrived at your minimum estimate of 3,500 tons you broke that down between scrap and stuff that was salable in that form? Is that what you mean? [33]

A. Yes. And then, another thing, some of it was indefinite. When we figured the pipe in those wells, we figured under any condition we could get 50,000 feet and possibly we could get 100,000 feet. A thing like that is indefinite as to what you run into when you start

(Deposition of T. H. Clements.)

to pull those wells. And the same thing on those pipe lines; on some of the lines we figured they would have to be cut up into scrap because of the soil corrosion. As a matter of fact, a lot of the lines we cut up into scrap. They were useless as pipe.

Q. How did you tie that into your figure of 3,500 tons?

A. A certain proportion of our whole figure would be scrap and a certain part of it usable. You were asking that question as to what was our tonnage of all types and descriptions. When we figured it there on the cuff, we were allowing different price schedules for different items.

Q. I am talking now about tonnage only. The 3,500 tons you mentioned as a minimum included both the scrap and the other equipment that you were taking off, that was salable as such?

A. Yes; in other words, all metal.

Q. Getting back to the scrap, you mentioned this mountain of steel lines.

A. No. That was old cable-tool drilling cable.

Q. Cable? [34]

A. Mostly. For instance, on an item like that we didn't know whether to value it for much of anything or not. It was pretty rusty. And, as I recall, that is one of the things we figured we might haul out of there and yet we wouldn't dare put any valuation on it in dollars and cents at all. And, as a matter of fact, we got into a lot of grief after we cut it up.

(Deposition of T. H. Clements.)

Mr. Paradise: I move to strike that part as being non-responsive to the question, the latter part.

Q. What tonnage did you figure there was in that pile of wire line? A. I have forgotten.

Q. You have no recollection whatsoever?

A. No.

Q. You wouldn't state any figure? A. No.

Q. Was there loose metal around the refinery?

A. There was a lot of scrap pipe, you might term it, and then up over the lease, scattered around where the derricks had stood, there was lots of loose cable and scrap pipe around those locations.

Q. Were there any loose corrugated iron sheets or drilling bits scattered around the property? Do you recall that?

A. No. All the drilling bits had been removed. In the blacksmith shop down below there was a lot of old cable [35] tool jars, as a matter of fact, and I think there were one or two bits, but the amount was negligible of the bits. There was no loose galvanized iron. All of these buildings were galvanized and wood structures but we didn't figure the galvanized material as loose galvanized at the time because we figured we would sell them as buildings at the time, which we largely did.

Q. Calling your attention to the refinery itself and the items of the stills and boilers and other equipment around the refinery, you mentioned that some of those properties were excluded from the sale. Do you recall that?

(Deposition of T. H. Clements.)

A. Yes; the barrel stills largely were excluded. There were either two or three shells, which had formerly been used as stills and had been lifted out of the settings and were laying there loose in cradles in the same battery, which were not excluded but the stills themselves had been previously sold to the O. C. Fields Gasoline Corporation.

Q. You expected to get under this sale, did you not, the supports for those stills that were excluded from the sale?

A. Yes. As a matter of fact, in discussions with Mr. Harold Davis, the 8-inch buck stays, you might say, of those steel settings were definitely included in our transaction. And, as a matter of fact, it was stipulated that—

Q. To what are you referring? Is it a specific conversation with Mr. Davis? [36] A. Yes.

Q. When did that occur? A. For instance, it occurred the last time in your presence, when we were sitting at this desk. And we asked specifically where O. C. Fields' line stopped and started, whether they took the lines from the stills over to the condenser boxes, and the answer was that the O. C. Fields purchase stopped at the first flange connected to the still and everything outside of the flange in the stills was to be our property, and that included not only the vapor lines to the condenser boxes but the fuel oil lines, the charging lines, the transfer lines and all of that type of merchandise.

Q. Were there some overhead lines also there?

(Deposition of T. H. Clements.)

A. There was a vapor overhead line also there and there was some steam smothering lines which were excluded from the O. C. Fields purchase.

Q. Those items which you have just mentioned are all items that are not included in the description of boilers, pumps or engines, is that correct?

A. No. Well, will you reask that question so I can answer it a little bit more intelligently?

Mr. Krasne: I object to that on the ground it is incompetent, irrelevant and immaterial and the answers reconciled with the phrases that counsel refers to will speak for themselves.

Q. By Mr. Paradise: Will you answer the question? [37]

Mr. Krasne: If you understand it.

A. I really don't understand the question. In other words, it was stated and mutually agreed that—

Q. By Mr. Paradise: Are you talking about a conversation now?

A. We are speaking about that conversation that took place at this desk, the last conversation we had, where we wanted to have definitely stipulated what O. C. Fields took out of that still battery.

Q. Perhaps you don't understand my question. Referring to these additional overhead lines and supports for the stills, are those boilers? A. No. It is pipe.

Q. Is it a pipe line? A. Well, the vapor overhead lines were 40 to 45 feet in length. I don't think that would constitute a pipe line particularly. Of course, the

(Deposition of T. H. Clements.)

charging lines underneath ran probably 80 feet over to a charging pump and then their sections ran down the valley maybe 1,000 feet to a crude storage tank. So from that pump down to the tank you would call that a pipe line but you wouldn't hardly call the short pipe between the pump and the still a pipe line. You would call them in normal oil field language charging lines or transfer lines.

Q. The steel supports for these various stills—I will strike that out. I think you mentioned that Mr. Fields' [38] company, the Casmite Company, was purchasing certain of those stills, is that correct?

A. They bought all stills.

Q. And those stills were cut off at a certain point and you were to have all of the supports around it, is that correct? A. Yes.

Q. All of that still that you were to get, that was not to be a part of the stills that Mr. Fields was taking, would not be classified as pipe line, would it?

A. I want to clarify one point there. You used the word supports. Those stills rested primarily on a big rack and the work around that was in the form of buckstays to keep the brickwork from shoving apart.

Q. That may be the technical term but will you describe what you mean by a buckstay?

A. They were largely 8-inch channel and I-beams which stood up and down in the brickwork, and there were $\frac{3}{4}$ and 1-inch rods that ran through this stiffener member and through the brickwork and a similar member on the other side of the brick setting which prevented the

(Deposition of T. H. Clements.)

crumbling apart of the stills. As I recall, none of these stills were what we call hung supports like you often do find in some construction. As I remember, these stills were all supported on the brickwork primarily itself. They were not slung members or slung tankage. [39]

Q. You expected to get all of that additional still as a part of this transaction, is that correct?

A. We not only expected to but we did.

Q. You mentioned that you made an estimate of the recoverable tonnage of casing from those wells. What was that estimate?

A. We figured we could get between a minimum of 50,000 feet of pipe up to 100,000 feet of pipe.

Q. What was the tonnage of that? Can your translate that into tons?

A. The vast majority of that was 10-inch pipe and the record showed that it averaged 40 pounds a foot.

Q. What records are you talking about?

A. The drilling logs.

Q. Those are the drilling logs that you examined after this contract was signed, is that correct?

A. Yes.

Q. You didn't have those before you at the time you were making this estimate?

A. You could see the pipe coming out of the well and we figured—

Q. Just a moment. You didn't answer the last question.
A. Will you read that question?

(Deposition of T. H. Clements.)

(Question read by notary.)

A. It wasn't necessary. [40]

Q. Will you answer the question? Did you or did you not? A. No.

Mr. Krasne: You may answer the question and then, if you have any explanation for the purpose of the record, you may make it.

A. It was unnecessary because I had previously seen the logs and, furthermore, I had seen the wells drilled and I knew what pipe in general had gone into the wells.

Q. By Mr. Paradise: The last time you had seen those logs was how long before that time?

A. Oh, a matter of four or five years.

Q. Did you know what had occurred to the wells subsequent to that time?

A. You asked that question before and you struck it out because it was hearsay.

Q. I don't want to inquire as to what you heard. I want to know what you saw.

A. I hadn't seen anything done to the wells in the way of pipe removal.

Mr. Krasne: Just a moment. Let's have counsel's previous question, please, and I think you can answer it.

(Previous question read by notary.)

Mr. Krasne: If you can state what happened, you may answer the question.

A. I had seen the derricks had been removed and the [41] draw works had been removed and the engine

(Deposition of T. H. Clements.)

had been removed and all of the drilling equipment and you could see that the production piping had been removed.

Q. By Mr. Paradise: You are talking about what you could see when you examined the property?

A. Yes.

Q. Did you count the wells on the property?

A. Well, we didn't go to every one and count them but we checked the blueprint and counted them and we verified their existence by walking over a large majority of them.

Q. What blueprint are you talking about?

A. The blueprint in the possession of Mr. Duncan there.

Q. That was the map that Mr. Duncan gave you?

A. Yes.

Q. I think you stated that when you looked at the wells there was a short piece of pipe coming out of the surface and it was capped on top, is that correct?

A. That is correct.

Q. From looking at that, could you tell the casing program in that well, how much casing there was in it?

A. What do you mean by the word program?

Q. Well, how much casing was installed in that well and was there at that time?

A. On these stubs that came up, there were in several cases gas lines still coming up and connected to those casings, which showed that the wells were not dead and were [42] still alive.

(Deposition of T. H. Clements.)

Q. How many would you say there were of such wells with gas lines attached to them?

A. In one location there, there were 8 or 10.

Q. 8 or 10 wells? A. Yes.

Q. Were there more than that in other locations?

A. A lot of the other locations where we went around and checked you could see gas bubbling out. In some of the casing, as a matter of fact, there were places where there was some oil coming out.

Q. Coming out of the stub of the pipe that was capped?

A. Yes. In other words, you could see little gas bubbles coming out of a lot of pipe, which would indicate they were still open holes and had not been cemented off.

Q. Where were the bubbles coming from? Were they coming from the joint on the cap? A. Yes.

Q. And there was oil dripping from them?

A. You could see it coming out through that heavy tar. On some wells, where there was a little seepage around the casing going over to sumps, you could see where it was flowing a little bit, where it was coming up around the casing and wasn't a perfect shut-off.

Q. You say you estimated that there was a minimum of 50,000 feet to be recovered and a maximum of around 100,000 [43] feet?

A. That is right, of average 10-inch pipe.

Q. Of 10-inch pipe? A. Yes.

(Deposition of T. H. Clements.)

Q. How did you determine the size of the pipe?

A. From experience primarily but then most of the stubs which we were looking at were 12- and 14-inch pipe, which meant that the string going down was either 10- or 11-inch pipe.

Q. You are referring to two sizes of strings?

A. One is the surface string, which is the largest string, and the other is the inside string, which is smaller. These surface strings averaged 12 and 14 inches, or I suppose, technically, they are $12\frac{5}{8}$ and various figures.

Q. And from that you guessed that there was an inside string of a smaller diameter, is that correct?

A. I not only guessed it but I practically knew it.

Q. How did you know it?

A. From past experience.

Q. Do you mean an examination of those particular wells? A. Yes. And I knew of other wells, too.

Q. Would an examination of another well show you what was in those wells?

A. Experience would tell you.

Q. Well, did you know what was in these wells? [44]

A. I said that previously I had heard in Santa Maria that the production string had been removed and that is all that had ever been done to the wells.

Q. What do you refer to as the production string?

A. Generally, it consists of a 3-inch pipe going down into the formation, at the bottom of which there is a pumping barrel, and there is a sucker rod which comes up the center of that, which comes up and down and pumps the oil to the surface.

(Deposition of T. H. Clements.)

Q. Is that what is commonly referred to in the oil industry as tubing?

A. That is right. It is known as a production tubing or a production string or production pipe.

Q. That tubing or, as you call it, production string wasn't cemented in the well, was it?

A. No. It was loose. No; that is not general practice. It used to be cemented but it had to be removed too often.

Q. On what basis did you estimate that there were 50,000 feet of recoverable—I will withdraw that. What do you refer to as recoverable casing?

A. The amount you can get out of the well and still comply with your abandonment program as set forth by your State Bureau of Mines, their rules and regulations.

Q. Do you mean by that that you cannot take out all of the pipe that is put into a hole? [45]

A. Oh, no. You can only take out that which is, you might say, excess above that which is necessary to seal off encroaching waters or oil seepages from one strata to another.

Q. How much pipe must you leave in a hole when you recover part of a casing?

A. Enough to prevent leakage into the well from one strata to another.

Q. It is necessary, is it not, to leave the well completely cased with pipe?

A. Pipe; yes; pipe and cement. And the bottom zone, where it is open hole, as it often is, has to be cemented off as well.

(Deposition of T. H. Clements.)

Q. With cement? A. With cement.

Q. When you talk, then, about recoverable casing, you mean the quantity that you can take out over and above the quantity that the mining division of the Bureau of Oil and Gas requires to be left in there, is that correct?

A. That is correct.

Q. That is the quantity you are talking about when you say a minimum of 50,000 feet and a maximum of 100,000 feet? A. That is right.

Q. How did you arrive at those two estimates?

A. Well, about a year previous to that, on the other side of this arroya or stream, I had seen some wells pulled [46] there by O. C. Fields, which they had purchased from the Associated Oil Company. They were offset wells to a lot of these wells in question.

Q. How far away from these wells were they?

A. Oh, some of them were only 75 and 100 feet.

Q. From these wells?

A. Yes. I am guessing at it. They were what we call offset wells down a common boundary line there and it was general practice in those days to set those offset wells pretty close together. And I had seen some of the pipe removed from those O. C. Fields wells.

Q. Then you estimated the quantity at that time?

A. I inquired how much they were getting out of those holes.

Q. When you talk about those offset wells, is it not correct that only certain wells on the O. C. Fields property were close to the line wells on the Richfield property?

(Deposition of T. H. Clements.)

A. They were offset adjacent wells.

Q. How many wells were you figuring on on the Richfield property?

A. I have forgotten the exact number. It was up around 60 or 67 or something like that as I remember.

Q. That was the number you counted on the map?

A. Yes; that is right.

Q. Did you know at that time that there were only 35 wells on the Richfield property? [47]

A. When you say property, that Richfield layout there covered three properties.

Q. Is the map that you were looking at the same map that is attached to the contract that was signed between Richfield and Aaron Ferer & Sons?

A. That is right.

Q. Before you leave that point, I would like to get that map. Mr. Clements, will you step over here and look at this map? This is a map entitled "Map of Soladino Lease, showing equipment, Casmalia Field", and it is attached as Exhibit A to the contract between Aaron Ferer & Sons and Richfield Oil Corporation, dated January 17, 1941. Is this the map or is this a copy of the same map that you and Mr. Ferer were using at that examination?

A. That is right. The only thing is, when we examined this map, we found that there were a lot of wells on that property which didn't appear on this map. That is the reason we didn't know just how to figure it. Later, when we got these other blueprints,—for instance, as you come in this gate, here is the first thing—

(Deposition of T. H. Clements.)

Q. "That" doesn't mean anything in the record. Will you identify it by location?

A. Well, for instance, we first came in across this bridge, at the main entrance there.

Q. At what corner of the property is that by directions? [48]

A. It is almost diametrically in front of this bridge. That is the southwest corner of the property that you really enter. This is north. For instance, when you come into this property directly around this road right in here, there is an old well which is stubbed up and doesn't appear on this map at all. As a matter of fact, when we went back and checked the records later, we found another map which showed these wells in this zone in here which don't even appear on this map. In other words, we couldn't determine just how many wells there were because they were not all on this blueprint or map.

Q. Did you inquire of anyone as to the number of wells? A. No.

Q. You were unable to determine from the map but you made no inquiry, is that correct?

A. That is correct.

Q. Is it not a fact that the map you were looking at covered several other parcels of property in addition to the one parcel of property shown on this map?

A. Which blueprint is that? Do you mean this map here?

(Deposition of T. H. Clements.)

Q. I will ask you again if the map that you were using at the time you inspected the property, which Mr. Duncan gave you, did not cover several additional parcels of property over and above the one parcel of property that is shown on this map that is attached to the contract.

A. As I remember it, it was this same map, although I [49] may be wrong.

Q. Will you look at the boundaries of this property and tell me if your answer is the same?

A. That is a year and some fraction ago since that occurred but, as I remember, the blueprint we looked at did not cover adjacent property. For instance, I know it didn't cover the loading rack which was down beyond the Black plant and it didn't show the O. C. Fields property.

Q. I believe that this parcel of property shown on this map, Mr. Clements, covers approximately 400 acres, is that correct?

A. I never figured the acreage. So I can't answer it.

Q. You say the map that you saw showed approximately how many wells?

A. I think that we arrived at it would be around 60 or 65 wells that we could work on or something of that sort.

Q. Did you ask Mr. Duncan for that map?

A. When we went into the property that morning; yes. We went up to the house and asked for the use of the map, as instructed by Mr. McGahan.

Q. You asked for what map? Do you recall your conversation with Mr. Duncan?

(Deposition of T. H. Clements.)

A. No. We just merely asked for the Richfield property map there.

Q. Did you identify the particular parcel of property you were interested in of the various parcels that Richfield [50] owned up there?

A. I don't believe I understand the context of that question.

Mr. Paradise: Will you read it?

(Question read by notary.)

Mr. Paradise: Will you strike the question and I will reframe it?

Q. Did you tell Mr. Duncan which particular parcel of property of the various parcels that Richfield owned, which particular one of those, you were interested in?

A. We didn't discuss anything about the property with Mr. Duncan.

Q. You just asked him for a map, is that correct?

A. Yes, sir.

Q. Will you point out one further thing on this map to me, Mr. Clements? In what portion of this parcel of property that is shown on this map is the refinery property, that is to say, the refinery operations?

A. The refinery operations extended along the southern section of the enclosed property.

Q. Are there any wells in that portion of the property? A. Oh, yes.

Q. There are? A. Yes.

Q. Will you point them out? [51]

(Deposition of T. H. Clements.)

A. Here is one, for instance, right above the refinery proper.

Q. That is in which corner of the property?

A. It is in the extreme southeasterly corner.

Q. Are there any other wells at the refinery end of the property, on the southern end of that property?

A. May I have the question again, please?

(Question read by notary.)

A. How far from the boundary line do you mean by that question?

Q. There is a ditch that runs through the property which separates the refinery portion of the property from the producing end of the property, the oil well producing end, isn't that correct?

A. That is true. This is it here.

Q. This direction is south, isn't it? A. Yes.

Q. South of that ditch there are no other wells, are there, in connection with the refinery?

A. Other than this one?

Q. Yes.

A. I believe that is the only one we saw capped.

Q. All of the oil wells, other than that one, are in the northerly part of this parcel, isn't that correct?

A. Yes, as far as this map shows but there are other wells on the south part of the property.

Q. Where were those 60 wells you mentioned? [52]

A. Scattered over the whole property.

Q. Scattered over the whole property? A. Yes.

(Deposition of T. H. Clements.)

Q. That is shown on this map that is attached to the contract? A. That is right.

Q. By examining this map, can you identify the boundaries of the property?

A. It is marked in heavy lining and it would be pretty easy to identify it.

Q. I mean by looking at the map can you tell approximately where that comes on the land, that is, the boundaries that are shown on this map?

A. The land up there has a big wire fence around it and it wasn't any trouble to tell the boundaries of the property.

Q. Did you ever attempt to compare that wire fence with the boundaries shown on this map?

A. No. There is one place down in this corner where, after we were under way, we found this wire fence had shifted somewhat over onto the Morganti property and, as a matter of fact, we removed some scrap metal from that corner which later we had to replace because it was on Morganti's property.

Q. I don't mean to mislead you at all about this or to be obscure in the question but is it not correct that the [53] number of 60 or 65 wells that I think you mentioned were wells on property in addition to the property that is shown on this map?

A. No. We figured those inside of the boundary lines of that fence.

Q. A fence running along which boundary of the property? A. As shown by this map.

Q. As shown by this map? A. Yes.

(Deposition of T. H. Clements.)

Q. Did you take this map out and compare it with the fence, that is to say, do you know that that fence was—

A. Well, it is approximately correct.

Q. You are talking about the fence along the west boundary of the property?

A. I am speaking of all four boundaries.

Q. And you compared those with the map and identified them as being the boundaries shown on this map?

A. Approximately.

Q. When did you do that? Was it before or after the contract was signed on January 17, 1941?

A. In the early part of December, I went up to the property with Mr. Ferer and we went over it with the map.

Q. The map that you are talking about, that you used for comparison purposes, was the map that Mr. Duncan furnished you, is that correct? [54]

A. That is right.

Q. Did you ever compare it with this map that is attached to the contract?

A. I never had occasion to ask for the map from Mr. Duncan afterwards.

Q. I am afraid I didn't understand that.

A. We returned the map to Mr. Duncan and we never had occasion to ask for it after that time.

Q. You just used the map that first day?

A. That one and only day.

Q. And that day is the day you identified the boundaries with the fence?

A. Yes.

(Deposition of T. H. Clements.)

Q. Did you examine this map at the time this contract was signed to see if this was the same map and the same boundaries that were shown on the map that Mr. Duncan gave you?

A. I compared that map when we got it with the boundaries which were marked by those fences.

Q. That is the map you asked Mr. Duncan for that you are talking about?

A. No. When you supplied that map with your contract and brought it out, I compared it in my mind's eye with the property as we saw it inside of those fence boundaries.

Q. Did any Richfield representative or employee tell you that this map was the same map as the one that Mr. Duncan [55] showed you?

A. No. It was never discussed.

Q. You examined it yourself and formed your own conclusions, is that correct? A. That is right.

Q. How much recoverable casing per well did you estimate?

A. Well, we figured a minimum of 1,000 feet per well.

Q. How much?

A. A minimum of 1,000 feet per well. That is the reason we said, "Well, we can get at least 50,000 feet."

Q. 1,000 feet per well? A. Minimum; yes.

Q. And you figured on how many wells?

A. We figured a minimum of 50 wells but we said, "Well, there are probably 60 or 65. We don't know just how many."

(Deposition of T. H. Clements.)

Q. When you say a minimum of 50 wells, why did you fix that as a minimum if the map showed something over 60?

A. Well, because we figured some of those wells appearing on the map, which wasn't very apparent, might have been cemented off so you couldn't get anything out of them and we didn't know their status.

Q. There were certain wells that you didn't know the status of, is that correct?

A. It wasn't very apparent on looking at them. [56]

Q. Could you tell the status of any of the wells from looking at them?

A. Why, sure. If you get gas off of a well, you know the well isn't dead.

Q. You say certain of the wells had gas seepages from the caps?

A. Yes. And, not only that, there were open gas lines coming off of a portion of them.

Q. Are those the wells that you figured were a minimum of 50 wells, the wells in which you saw gas seepages and wells that were connected to gas lines?

A. There were not that many connected to gas lines because the ones on the north end of the property were not connected. But, just glancing at them, we figured they were still live wells.

Q. How many live wells did you see?

A. I said that we guessed, and that was a guess, that there was in excess of 50, 50 minimum; that that would be the very basic minimum.

(Deposition of T. H. Clements.)

Q. When you are talking about 50, do I understand you saw 50 wells there from which there were gas seepages and to which gas lines were connected and which you, therefore, knew or surmised were live wells?

A. In the time that we took for this survey, which constituted one day, we didn't have time to go over and examine every well. [57]

Q. How many of those wells did you say you didn't know the status of and that might have been cemented off and that you couldn't recover any casing from?

A. The wells which appeared on the blueprint which we were looking at, which were surplus over and above that. We figured those were wells that were there possibly before the Doheny people had started drilling and might have been abandoned.

Q. I thought you said that blueprint you were looking at showed some 60 or more wells?

A. I don't remember how many wells appeared on that map. We did count some wells which did not appear on the map and we guessed from observation that there was at least 60 wells to be pulled.

Q. Did you know or could you tell from looking at those wells that there were any of those wells which had no recoverable casing, that is to say, casing that could be removed?

A. That was part of the gamble. When you go into a deal like this, you are gambling. You don't know everything you are going to get out of a property. You are gambling. And we guessed a minimum of 50 wells we could pull and we guessed a minimum of 50,000 feet and a maximum of 100,000 feet. We gambled or guessed that.

(Deposition of T. H. Clements.)

Q. You guessed at the number of wells and guessed at the amount of casing you could take out, is that correct? [58]

A. That is correct. We didn't have time to go over and mark and check every one with the blueprint. We were guessing.

Q. What was the tonnage of the recoverable casing that you estimated between the limits of 50,000 feet and 100,000 feet?

A. We based it on an average of 10-inch pipe and that pipe would run approximately 40 pounds a foot in those days. That was a rather light weight 10-inch pipe. And, if you took 50,000 feet out, it would be simple mathematics that it would be 50,000 times 40 minimum.

Q. That would be a minimum of 1,000 tons, would it not?

A. That is right.

Q. And a maximum of 2,000 tons?

A. That is right.

Q. Did you inquire of Mr. Duncan how many wells there were?

A. No.

Q. Did you inquire of any other Richfield employee how many there were?

A. No.

Q. Did you inquire of any Richfield employee or representative how much recoverable casing there would be?

A. I never discussed it with anyone.

Q. Did you ask any Richfield employee or representative [59] as to the casing that was in any of those wells?

A. No.

(Deposition of T. H. Clements.)

Q. Did you inquire as to the quantity of recoverable casing that could be taken out?

A. The same answer.

Q. The casing of the wells was—or your estimate of the recoverable casing in the wells ran from 1,000 to 2,000 tons, is that correct? A. That is right.

Q. Or approximately one-third of the estimated recovery? I believe you stated that you estimated a minimum of 3,500 tons and a maximum of 6,000 tons as the over-all tonnage of all the equipment, is that correct?

A. Something like that.

Q. So that this estimate of yours of 1,000 to 2,000 tons of recoverable casing was something over one-third of the quantity you expected to get of the entire equipment?

A. Yes; it would be between a half and a third of the total tonnage of everything.

Q. You say you made no inquiry of any Richfield employee or representative concerning the casing in the wells? A. No.

Q. Or any of the Richfield executives? A. No.

Q. I think you stated that the way you determined that wells had not theretofore been abandoned was by the fact [60] that you could see seepages, gas seepages, and oil seepages, from the caps of certain of the wells, is that correct?

A. I answered that before and you had it struck out. I found out, as you do in the oil field trade, from mouth to mouth, that the production piping had been pulled and the wells had been left intact.

(Deposition of T. H. Clements.)

Q. Were you told that by any Richfield employee or representative?

A. I never saw any Richfield employees up there other than this fellow Duncan at any time.

Q. Did you inquire of Mr. McGahan or Mr. Davis?

A. I never discussed it with them.

Q. Did you have conversations with any other Richfield representative other than Mr. McGahan or Mr. Davis?

A. Relative to what?

Q. Relative to this purchase and the examination of the property.

A. Never at any time.

Q. Did either of them tell you whether or not those wells had been abandoned?

A. It was never discussed.

(By agreement between counsel for the respective parties, a recess was taken, at the hour of 12 o'clock noon, to the hour of 1:45 p. m. of the same day.) [61]

(Met pursuant to agreement, at the hour of 1:45 p. m. on the same date, at the same place, the same parties being present except Mr. Sturzenacker.)

Q. By Mr. Paradise: Referring to this information that you say you had, Mr. Clements, about the fact of the derricks being taken down and the tubing and the production strings removed, when did you get that information?

A. I think it was about in the midsummer of 1940. I know I had taken a trip through there and noticed the derricks down and I asked over in Santa Maria and had been told that Mr. Anderson over there, who calls himself the Petroleum Supply Company, had pulled out.

(Deposition of T. H. Clements.)

Q. Did you talk to Mr. Anderson? A. No, sir.

Q. Did you talk to any of Anderson's staff or employees in connection with the matter?

A. I think I talked to one of the crew who had been working there.

Q. Did he tell you what they were doing?

A. Well, at that time it was what they had done.

Q. Did he tell you what they had done?

A. Yes; he told me they had pulled the production piping out and that is about all outside of the stuff on the surface there.

Q. Did he state any reason as to why it had been done? [62] A. No.

Q. You were familiar with the condition of the property at that time just before it had been done, were you not? A. Yes; pretty much.

Q. Were those derricks in good condition?

A. Oh, no. Some of them were blown over. It was a pretty crummy looking field.

Q. Did you know anything about the condition of the tubing and the production strings in those wells just before they were taken out?

A. I talked to this fellow and I asked him how the pipe was and he said it was pretty good pipe.

Q. Was that the tubing or the casing?

A. No; the casing wasn't involved. It was the production strings.

Q. You are talking about the tubing? A. Yes.

(Deposition of T. H. Clements.)

Q. The tubing that went in the well, that was not cemented in? A. Yes.

Q. And he said what?

A. That the pipe was pretty good.

Q. How do you go about pulling that? What is the nature of that operation of pulling the production strings?

A. Well, to start with, you have to get the log and [63] then go down there and determine where you are going to cut it off, and either you go down there with a cut-off tool or most generally they just lower a slug of dynamite down there and blast it off at the point you want.

Q. Are you talking now about the casing or the tubing? A. I am talking about the casing.

Q. I am not talking about the pulling of casing in wells. What was the operation of pulling tubing in wells? How was that performed?

A. The tubing is put together around 30-foot joints and you have got a casing and what you call a tubing hook and you clamp it around right below the collar and you elevate it a certain number of feet in the air and then unscrew it and keep on unraveling it as you pull it out.

Q. When you say "clamp it", you are referring to the tubing, is that correct?

A. Yes. You clamp right below the collar so that you won't skid or slip on the pipe when you elevate it.

Q. Knowing, as you did, the condition of those derricks at that time, was it possible to pull those tubings from those derricks or was it necessary to have special rigging-up operations in order that the tubing could be pulled?

(Deposition of T. H. Clements.)

A. I assume that he used one of those portable oil field tubing pullers because the derricks were in pretty miserable shape. I don't know. I didn't see it done and I [64] really can't answer that question as to how he did. But I know they use around fields portable well pullers, they call them, to handle jobs like that.

Q. With that knowledge, Mr. Clements, did it occur to you that, if Richfield employed this man Anderson that you speak of to tear down the derricks and to pull the tubing, there was some reason why Richfield wanted to retain the casing in those wells and not have the wells abandoned or the casing pulled?

A. I never was told at any time they intended to retain the wells or the casings in the wells. The point was never raised.

Q. The information that you said you had as to the work that Anderson had done was that the casing was left in the wells, is that correct?

A. That is right.

Q. Did you have any information that the wells were not abandoned at that time by Anderson?

A. I was told that he had pulled the production strings and the surface material and that the wells otherwise were left the way they were. That is what I was told.

Q. In other words, they were not abandoned at that time?

A. That is right.

Q. Did it occur to you that there was some reason, when Mr. Anderson was employed to pull the tubing and remove [65] the derricks, that Richfield had for not having the wells abandoned or the casing removed?

(Deposition of T. H. Clements.)

A. The truth of the matter is, the way I heard it, ——

Q. Can you answer the question first?

A. Yes. The way I heard it was that Anderson went in there and was grabbing the gravy train and was getting much of the material that was loose, without much labor expended, on some tonnage basis which was very advantageous.

Q. From whom did you learn that?

A. General conversation around town and around the field.

Q. From whom?

A. I can't tell you now at this distant time.

Q. Isn't it the fact, Mr. Clements, that Mr. Anderson was prevented from removing the casing, that is to say, that the transaction was limited to merely pulling the tubing and the rods that were in bad condition and removing the derricks but not to abandon the wells or to remove the casing?

A. I don't know. I didn't see the contract and never discussed it with Mr. Anderson.

Q. You knew, however, at that time the wells had not been abandoned in accordance with the requirements of the mining division, is that correct?

A. Yes; by conversation.

Q. Did you inquire of any Richfield employee or [66] representative why those wells had not been abandoned?

A. No.

Q. Do you know when Mr. Anderson's work was performed by him?

(Deposition of T. H. Clements.)

A. Not specifically on dates; just in the general period there.

Q. It was within a year prior to the time when this transaction was consummated between Richfield and Aaron Ferer & Sons, was it not?

A. Generally; yes.

Q. Knowing that that work had been done by Mr. Anderson within one year prior to the date of this transaction and that the wells had not been abandoned, and knowing further that it was an operation that required rigging up, that is, putting up a mast in order to pull the casing from those wells, didn't it occur to you that there was some reason why Richfield didn't want those wells abandoned and the casing removed, which operation could very easily have been accomplished by Mr. Anderson at that time?

A. He wouldn't use the same rigging to pull those wells.

Q. What sort of rigging do you need to pull wells?

A. Most of them today use a very heavy hydraulic well puller.

Q. All you use is a drill mast, isn't it?

A. As a rule, when the casing is stuck in the hole, [67] those drill masts are too light and won't handle it.

Q. You can't tell that until after you get in the well, isn't that true?

A. The presumption is you have to use something heavier than one of those light well-pulling outfits.

(Deposition of T. H. Clements.)

Q. Are you talking now about deep wells or wells as shallow as these wells?

A. I am speaking of any well.

Q. With that knowledge that you had at that time, Mr. Clements, did it occur to you to inquire of any Richfield representatives why those wells had not been abandoned in the past and why they were willing that the wells be abandoned at the time of your transaction?

A. The wells were never discussed by me with any Richfield employee at any time.

Q. Mr. Clements, did you participate in the determination of the sum of \$22,000 to be offered by Aaron Ferer & Sons to Richfield for the equipment and facilities which were to be sold under that contract?

A. Yes. When Mr. Ferer and I were up there, we discussed it and we had other conversations on it. And, as a matter of fact, if I remember correctly, I assisted in preparing the first letter of proposal to Richfield.

Q. How did you arrive at that amount?

A. The initial investment isn't all cost in a removal of that sort. In other words, your abandoning operations [68] cost you a considerable amount of money and we looked it over and and determined what we thought we could realize back in dollars and cents and how much we could afford to gamble on it. After all, it is a gambling operation. You can't determine specifically on a deal like that what you are going to get out. You don't know the nature of all of your underground piping and the nature of the pipe you get out of the well and you can't even tell about all of the things that you do look at, as to whether it will be merchantable merchandise or not.

(Deposition of T. H. Clements.)

Q. You went up there for the purpose of seeing how much there was and what the condition of it was, however?

A. That is right; in the early part of December.

Q. Let's take this step by step. You estimated, I think you said, that there were between 3,500 and 6,000 tons of removable metal?

A. That was our guess; yes.

Q. And that includes the recoverable casing that you estimated?

A. That is right.

Q. What did you value that at and how did you arrive at the valuation?

A. Well, that casing was one of our biggest gambles. We figured, if we could get it on the Los Angeles market, we ought to realize around a dollar a foot for it.

Q. What size pipe did you say you expected to get out [69] of those wells?

A. We figured it would average 10-inch.

Q. What was the price at Los Angeles at that time for 10-inch pipe?

A. It depends on what condition the pipe is in. Just for relaying purposes, which we figured it, it was anywhere from 90 cents to about \$1.35.

Q. What kind of pipe are you talking about now?

A. This 10-inch pipe coming out of the well.

Q. Did you know what kind of pipe was in there, whether it was seamless pipe or lap-welded pipe?

A. They didn't have seamless pipe back when those wells were drilled.

(Deposition of T. H. Clements.)

Q. You knew, then, it was lap-welded pipe, didn't you? A. Yes.

Q. And the prices that you just mentioned of 90 cents to \$1.35 per foot were for lap-welded pipe? Those were the current prices in the Los Angeles market at that time for lap-welded pipe, were they?

A. Yes; for lap-welded pipe, clean end, for relaying purposes, as for pipe line service.

Q. Did you know anything about the condition of that pipe?

A. No. That was part of the gamble.

Q. What does that 90-cent figure represent? Is that the lowest price for pipe in good condition? [70]

A. Oh, no. That is for rather miserable pipe. Good 10-inch pipe was selling for around \$1.20 to \$1.35.

Q. If the pipe were pitted by sulphur or by some other cause, what price would it bring in the Los Angeles market per foot at that time?

A. It wouldn't bring anything less than 90 cents.

Q. Do you fix 90 cents as a minimum?

A. About that; yes.

Q. Those are the figures on pipe that can be used for installation in oil wells?

A. Oh, no; for pipe line service. I didn't figure any of this pipe was suitable for going back in wells.

Q. What valuation, then, based upon those figures, did you place upon the pipe that you expected to take out, that you say you expected to take out?

(Deposition of T. H. Clements.)

A. Anywhere from \$50,000 to \$100,000 sales price. Of course, that is not all velvet. Of course, the cost of removing and transporting it to town and preparing it and so forth was an unknown quantity.

Q. What prices, excluding the casing that you mentioned—what did you figure was the value of the other equipment and facilities that you took off or that you expected to take off?

A. You are covering everything above ground there. So you are asking a pretty large question. What specific items do you mean?[71]

Q. Well, break it down as you see fit. Take the boilers, for example.

A. As I said previously, the boilers we cut the flues out of and sold the flues as pipe and the boiler shells were just so much shell or steel plate, unfortunately, rolled. We had an idea we could sell some of the boiler shells for culvert work, for instance. As a matter of fact, we sold some of the shells later to the Richfield for culverts themselves. The vast majority of the shells were loaded on cars and brought here into Los Angeles and stacked and are still in stock.

Q. You didn't answer my question, Mr. Clements. I am talking about the time when you were making your estimate as to the price you were going to bid for this property. What value did you place upon the boilers, including the shells and the flues?

Mr. Krasne: If they did that at the time.

Q. By Mr. Paradise: Did you place a value on it for your purpose? A. Oh, yes.

(Deposition of T. H. Clements.)

Q. What value did you place on it? A. I forget.

Q. Was it a trivial value or was it important in connection with the rest of the transaction?

A. The boiler shells were rather small. In other words, I believe there were 37 or 39 boilers on the [72] property. And, in terms of tonnage, the boilers with the tubing or with the boiler flues, I should say, you couldn't figure over about four and a half tons per boiler. So, taking it in terms of total tonnage, it was small, very small.

Q. Do you recall any value that you placed upon that for the purpose of making your bid?

A. I don't remember now.

Q. What value did you place upon the pipe lines?

A. All of the pipe lines we just thought of in terms of pipe.

Q. Did you value those separately from the casing in the wells?

A. Oh, no. They were all pooled together. We considered everything that was round and anything that material could flow through as pipe and we pooled it all together and figured it all together.

Q. Then, do I understand, if you lumped them all together, that those figures that you gave me of a minimum of 50,000 feet and a maximum of 100,000 feet included all of the pipe lines running around the surface of the property?

A. No; that wasn't my remark at all. That had only to do with the pipe in the wells.

(Deposition of T. H. Clements.)

Q. How much pipe did you figure on from the wells?

A. We figured in terms of tonnage. I forget what tonnage we figured now.

Q. Was there as much tonnage in the pipe lines [73] as you expected to be able to recover of casing out of the wells?

A. I answered that this morning and I told you at that time I thought it was a ratio of between 50/50 and a third.

Q. I don't think we are talking about the same thing, Mr. Clements. I believe you stated that the estimated quantity of recoverable casing to be taken from the wells that you were talking about was from 50,000 to 100,000 feet? A. That is right.

Q. What was the estimated quantity—

A. Which was between 1,000 and 2,000 tons, if you remember I said.

Q. What was the estimated quantity of the pipe lines?

A. I have forgotten but we pooled the whole thing together and all the metal that came off of the property, as I said this morning, was between 3,500 and 6,000 tons.

Q. You have no recollection of the quantity of pipe lines that you estimated? A. No.

Q. There were several thousand feet, were there not?

A. Yes.

Q. What valuation did you place upon the pipe lines?

A. I have forgotten.

(Deposition of T. H. Clements.)

Q. Was that an important factor in the transaction, the quantity of surface pipe lines that were on there?

A. The answer to that is that practically 90 per [74] cent, 80 or 90 per cent, of the whole transaction or whole deal constituted pipe, whether the pipe came out of the well or from an underground line or from condenser boxes or from tubings in the boilers.

Q. Let me ask you this. Was there more pipe in the surface pipe lines than the quantity that you stated that you expected to take out of the wells or was there less?

A. I have forgotten.

Q. You don't recall anything about that?

A. I have forgotten the figures.

Q. Do you recall your rough approximation of it or do you recall anything about it? A. No.

Q. We have talked about the boilers and the pipe lines and the casing in the wells. Now, what were the other major items that went to make up that estimate of yours of between 3,500 and 6,000 tons?

A. There was some scrap, as I mentioned before, and then there was steel plate, as I mentioned before.

Q. I have forgotten, Mr. Clements, whether you have stated the quantity of scrap that there was there.

A. I didn't state. I said I didn't know.

Q. Do you recall the valuations you placed upon those other two items of scrap and steel plates?

A. It was negligible because at the time we figured the trucking or, rather, the transportation into Los [75] Angeles, and the handling at both ends, and the price of the scrap market at the time was practically nothing.

(Deposition of T. H. Clements.)

Q. Were there any other items that you expected to take off and resell than the ones we have talked about?

A. We expected to take off everything on the property.

Q. Are there any other major items that occur to you on which you placed a valuation at that time?

A. No.

Q. Pooling all of those items, Mr. Clements, what was the aggregate value that you placed on everything that you expected to take including the casing in the wells?

A. Do you mean by that question sales value or purchase value?

Q. You placed a value on the recoverable casing at between 90 cents and \$1.35 per foot at Los Angeles, which I believe you said was the current market price for that pipe at that time, depending upon the condition. Now, did you value the other items in the same manner?

A. Yes; that is, the pipe we did.

Q. And what value did you arrive at?

A. We figured that we ought to get in the Los Angeles market somewhere between \$40 and \$50 a ton, delivered in Los Angeles, for pipe.

Q. For pipe?

A. Yes. In other words, that was the going current price for pipe delivered in wholesale quantities in Los Angeles if it was merchantable pipe.

Q. At \$40 to \$50 per ton for pipe, would the recoverable casing in the wells sell at this same price?

(Deposition of T. H. Clements.)

A. 40 pounds times $2\frac{1}{2}$ cents a pound gives you \$1, doesn't, a foot?

Q. I was trying to translate it into a tonnage price as you did. A. It is the same thing.

Q. That is, the same price that you mentioned, at limits between 90 cents and \$1.35 per foot, is the same thing as saying between \$40 and \$50 per ton, is it?

A. That is right.

Q. How much in the aggregate would you say you estimated at that time you expected to get for everything that was on the property that you expected to take off?

A. I have forgotten.

Q. You mentioned that you placed a value of between \$50,000 to \$100,000 on the pipe and casing from the wells, is that correct? A. That is right.

Q. And what portion was that figure of from \$50,000 to \$100,000 of the aggregate amount at which you valued the entire quantity of facilities and equipment to be taken from the property? Was that a half or a third or what portion of the aggregate was that?

A. We mentioned it in terms of tonnage, that [78] that would be between a half and a third. But that wasn't all based on the same price structure. In other words, that 3,500 included scrap and included plate and included pipe and pumps and cast iron.

Q. If you expected to get between \$50,000 and \$100,000 for the casing and the pipe, how much did you expect to get for everything, including the casing and the pipe? What figures did you use in making your estimate?

(Deposition of T. H. Clements.)

A. I have forgotten that. I couldn't say.

Q. What did you estimate to be your costs of doing all of the work that you were required to do under the contract? Or, by the way, what did that work include?

A. That is two questions. What is the first question?

Q. The first question is what work were you required to do as a part of this transaction.

Mr. Krasne: I think the contract will speak for itself and is the best evidence, Mr. Paradise, and I object to the question.

Q. By Mr. Paradise: What work would you have to do, Mr. Clements, in dismantling the refinery equipment?

A. As a matter of fact, refinery equipment so-called is a small part of it. It constituted some brick stills and some condenser boxes setting on some concrete columns. That was the majority of the so-called refinery.

Q. How large a crew of men did you expect to [78] put upon the property? A. About 60 men.

Q. How many? A. 60.

Q. And what work were those men going to do?

A. About half of them were to open up ditches and backfill ditches after the pipe was removed and there were truckdrivers and crews to unscrew the pipe where it wasn't possible to torch it, and we had cutters there to torch what we had to torch. We also had to have crews there to clean brick and get the brick out of the way and stack that up. The removal of the brick was a big factor in the whole transaction.

(Deposition of T. H. Clements.)

Q. Did your work include the matter of removing oil from tanks?

A. No. We decided we would remove the lines first and clear the property so that that portion was out of the way; then that we would take and drain off the oil into sumps and then fire those sumps. But we were precluded from going ahead and following out that part of the program because the fire warden refused to give us firing permits starting from the mid part of the summer on. They had had one or two fires in that territory, so he clamped down and wouldn't give us permits to clean up the oil in the sumps.

Mr. Krasne: I think Mr. Paradise's question is what estimates, if any, did you make, before you went into this deal, as to what kind of labor would have to be [79] done.

Mr. Paradise: Exactly.

Q. What were your estimates of the entire cost of your operations in connection with abandoning and salvaging and moving off this equipment and cleaning up the property?

A. I have forgotten the figure now.

Q. Can you tell me what the approximate figure was?

A. I have forgotten.

Q. What factors did you use in arriving at the figure at that time?

A. We were gambling on this. We couldn't tell how much labor was going to be used in it and we were just going into it blind and hoping it wouldn't run over too much. Most of these deals are run that way. You can't sit down at a desk and figure that stuff out.

(Deposition of T. H. Clements.)

Q. Did you estimate that you were going to need about 60 men?

A. We figured we would put 60 men on and see how it worked out. We might need more and we might need less.

Q. For how long a period did you expect to use them?

A. 60 men for approximately six months.

Q. Based on those figures, did you estimate the amount of your labor costs?

A. What was a basis for the estimated cost; yes.

Q. What figure did you arrive at approximately?

A. I can work it out backwards with a pencil.

Q. I don't want any calculations that you want [80] to make now. I am asking you for the estimates you made at that time.

A. Whatever it was, it was based on that figure.

Q. Just briefly, what were your labor rates that you expected to pay at that time?

A. Anywhere from 60 cents to 80 cents an hour.

Q. What other costs did you contemplate that you would have besides labor?

A. Trucking and transportation, which would be an enormous factor.

Q. Did you make any estimate as to what that would amount to?

A. Yes; we made an estimate at that time.

Q. What was it?

(Deposition of T. H. Clements.)

A. We figured, if the worst came to the worst, we would have to pay the rail rate into Los Angeles which at that time was around, as I recall, \$4.60 a ton or \$4.80 a ton into Oakland. And we toyed with the idea of putting in or buying trucks and using our own trucking equipment to bring it down and we figured we could probably transport it for \$2.50 a ton using our own equipment. And, as a matter of fact, later on the only reason we didn't use our own equipment was that we had the rail rate reduced to \$2.40 a ton, which was comparable to the cost of our own truck operations.

Q. Mr. Clements, I tried to make clear that my [81] questions are not as to what happened afterwards but merely as to what figures and estimates and costs you were using for the purpose of your estimates that you made before this contract was made. As to those transportation costs, what did you estimate they would be in the aggregate?

A. We figured at the time there would be anywhere from 3,500 to 6,000 tons to be moved at a cost of anywhere from \$2.50 to \$4.60 a ton.

Q. What were your other items of cost besides labor and transportation?

Mr. Krasne: Do you mean, again, what other items did they guess about or estimate at that time?

Q. By Mr. Paradise: What other items did you estimate at that time? What other factors of cost were you considering in making up your estimate?

A. Trucking costs there on the job, the cost of removing the brick and certain sales costs.

(Deposition of T. H. Clements.)

Q. What was the aggregate now of all costs that you expected to be subjected to? What was your estimate of them? A. I have forgotten.

Q. You have given certain factors. You have your factor of labor and transportation and those other costs. Now, within what limits did you estimate that your aggregate costs would be?

A. I am not very good on figuring things in my [82] head without a pencil.

Q. Do you recall that you did make an estimate at that time?

A. Certainly, we did make an estimate at that time.

Q. But you have no recollection whatsoever of what it was? A. No.

Q. Can you estimate it within \$10,000? I mean can you recall within \$10,000 of what your estimate was?

A. No. I have forgotten the figures.

Q. Can you recall it within \$50,000, what your estimate was?

A. I have forgotten the figure.

Q. Did you expect to make a profit on this deal?

A. We made that assumption; yes.

Q. What was the estimated amount of profit that you were considering at the time you made this offer?

A. We thought we stood to make a minimum of \$50,000 on the transaction, \$50,000 to \$60,000.

Q. And a maximum of how much?

A. \$90,000 to \$100,000.

(Deposition of T. H. Clements.)

Q. So you figured that the amount of your recovery, that is, the proceeds that you would receive from the sale of this salvage equipment over and above your costs, would be from \$50,000 to \$100,000, is that correct?

A. Yes.

Q. The amount that you expected to receive from [83] the casing in the wells I think you also stated was between \$50,000 and \$100,000, is that correct?

A. That is right.

Q. So that that figure represents the full amount of profit that you expected to get, that is, the proceeds from the sale of the casing in the wells represents, within those margins that you specified, the full amount of profit that you expected to get on the transaction, is that right?

A. It coincides with it.

Q. But in your discussions with any Richfield representative there was no mention at any time of any of the wells or the casing in the wells, is that right?

A. That is correct.

Q. Mr. Clements, to remove casing from an oil well, is it necessary to abandon the well, do you know?

A. Yes.

Q. Did you make any estimate of the cost of the abandonment of these wells?

Mr. Krasne: Do you mean at that time?

Mr. Paradise: At that time; yes. A. No.

Q. No estimate?

(Deposition of T. H. Clements.)

A. Oh, yes; we estimated it in our general cost set-up there. We hadn't gone ahead and gotten bids or obtained bids on doing it, though.

Q. What was your estimate of the cost of abandon- [84] ment? And when I say of abandonment, I am talking about the abandonment of the wells that you mentioned, the 60 to 65 wells that you spoke of.

A. We figured possibly we would have to put out maybe around \$30,000 or \$40,000.

Q. \$30,000 to \$40,000? A. Yes.

Q. What sort of an abandonment program were you contemplating when you made that estimate?

A. What do you mean by that question?

Q. I mean did you know in what manner you would be required to abandon those wells.

A. In general. I have seen wells abandoned before.

Q. It is necessary, is it not, to abandon a well in accordance with the requirements of the Division of Oil and Gas of the State of California? Isn't that true?

A. That is the State law.

Q. Are their requirements identical with respect to all wells? A. No.

Q. Did you know what their requirements would be with respect to these wells? A. No.

Q. Did you inquire of the Division of Oil and Gas as to what their requirements would be with respect to these wells? [85]

(Deposition of T. H. Clements.)

A. I did not. I had seen wells, on visiting there, abandoned, and I more or less could draw assumptions from that.

Q. When were those wells abandoned? How long prior to the date of this contract?

A. About a year or so.

Q. Were all of those wells that were abandoned on the adjoining property comparable to the wells on this property? A. Yes; about the same horizon.

Q. And same depths? A. Yes; approximately.

Q. How do you know that? A. Well, I happen to have lived up there and saw a lot of the wells drilled. It was just common knowledge in the territory over a period of years.

Q. Does it make a difference in the way a well is abandoned as to the type of casing that is in a well and the quantity of casing that is in a well?

A. Will you repeat that question? That is a little ambiguous. I didn't get it.

Q. I will reframe it. What were the average depths of the wells on this property?

A. Oh, as I recall, they ranged or averaged from 2,200 to 2,700 feet or probably an average of 2,400 feet.

Q. If the casing in one well went clear down to the bottom, would it be abandoned in a different manner [86] and at a different cost than if the casing only went half-way down?

A. The whole thing depends on how many strings of casing you have got in your well.

(Deposition of T. H. Clements.)

Q. Do you mean by that, if you have several wells, each drilled at the same depth, that it might require a different manner of abandonment for each one, depending on what the casing is in that well? A. Why, sure.

Q. Then, the fact that there were wells on the adjoining property—is that the Casmite property you are talking about? A. Yes; the old Associated property.

Q. —that there were wells on that property drilled to approximately the same depths as the wells on the Richfield property, would not be any indication as to what the cost of abandoning the Richfield wells would be, is that right?

A. Yes; it would be an indication because they were drilled at the same time and approximately in the same manner and under approximately the same conditions.

Q. Do you know whether they had the same casing programs in them as the Richfield wells?

A. From observation, I would say they approximated the same.

Q. From observation of what?

A. Of seeing those wells pulled and later from [87] observing these wells.

Q. How many wells did you see pulled on the Casmite property? And, when you say pulled, do you mean abandoned?

A. Abandoned; yes. I think there was a total of around 10 or 12 wells that they abandoned there. I saw them pulling one or two of them.

Q. So your estimate is based upon the two that you saw? A. That is right.

(Deposition of T. H. Clements.)

Q. Do you know now if the casing in the various wells on the Richfield property was identical in each well, that is to say, the quantity of casing?

A. Oh, definitely not. They all varied.

Q. They all differed, didn't they? A. Oh, yes.

Q. Between fairly wide degrees, did they not?

A. Oh, not within wide degrees. They would average up pretty much.

Q. Have you examined the logs and histories of those logs recently and do you now know the casing record and casing program in those wells?

A. Pretty much so over the period of the last year.

Q. Were you familiar with it at the time you and Mr. Ferer were making that examination of the property?

A. In a general way. I answered that this morning. I said I looked over some of those logs before and [88] the profile maps were in the office there. Some of them were on the wall.

Q. That was about five years before?

A. That is correct.

Q. Other than the knowledge that you had as to the pulling of the production strings, that is to say, the tubing, did you know of any other work that had to be done on those wells between that date five years prior to the date of the contract and the time when you and Mr. Ferer were making that examination? A. No.

Q. You didn't know whether any of those wells had been pulled or the casing pulled out or not, is that correct?

(Deposition of T. H. Clements.)

Mr. Krasne: That has been asked and answered.

A. I will answer it. In other words, there was apparently no change in the exterior appearance of those wells around there other than the derricks were gone. And, if they had cemented off those wells and so forth, there would be indications of cementing work being done recently.

Q. By Mr. Paradise: Taking a representative well on the property, will you tell me how it would be abandoned, that is to say, the quantity of cement that would be necessary to put in it?

A. A lot of those wells varied in the amount of open hole below the bottom casing. Some of them had 300 or 400 feet of well and some of them only took in 70 [89] or 80 feet of formation as I remember it. We checked it over and, as I recall, similar wells wouldn't take over about 80 sacks of cement and some of them in an extreme case, as I remember, took around 350.

Q. When you say we made an estimate, of what period are you talking? Are you speaking now of the time when you and Mr. Ferer were on the property?

A. Heavens, no; later.

Q. When you say later, do you mean before or after the contract was made?

A. On the estimated amount of cement for the sealing off of those wells we took individual wells and figured it later. When we figured the original figure I gave you awhile ago of the \$30,000 or \$40,000 for the abandonment, that included all labor, cement and other material.

(Deposition of T. H. Clements.)

Q. That estimate was not made by you until some time after the contract was signed, is that correct?

A. The more precise estimate was made later but we were figuring a certain amount of that money for cement in the original deal, if that is what you mean. That was part of the estimate, if you want to analyze it that way, because it was part of the \$30,000 or \$40,000 figure.

Q. In making up that \$30,000 or \$40,000 figure you included a specific quantity of cement, did you?

A. Yes. We were basing that on approximately an average of around 250 sacks. [90]

Q. Is that per well? A. That is right.

Q. What other cost did you contemplate in making that estimate of \$30,000 to \$40,000 as the cost of abandonment work?

A. Well, there is labor and rental of the equipment and there is dynamiting charges and there are charges assessed for inspection work and the cost of pumping out and taking your shut-off tests, in other words, the usual things incidental to the abandonment of a well.

Q. Did you include the rigging-up operations, the cost of rigging-up operations, in your estimate?

A. We were figuring on a portable unit that would go in there and pull them.

Q. Did your estimate include the cost of cleaning out those wells? A. Oh, yes.

Q. How much did you estimate that to be?

A. It was all included in this \$30,000 or \$40,000 figure.

(Deposition of T. H. Clements.)

Q. How much of the \$30,000 or \$40,000 figure did that include? A. I have forgotten.

Q. Was it a large factor? Was it half of the amount or was it less?

A. Well, we were basing part of our figure on [91] cleaning them out from the fact that there was some light distillate in one of those storage tanks up there on the lease, and we figured in most of the cases where it was tough going that we would pump some of that light distillate down those holes and cut them. Of course, we didn't know what we would be up against. Some of them might have sloughed up or off and we might be up against a bailer job. But we figured we could pump in some of that distillate and help the pumping operation in that way.

Q. How much distillate did you expect to have to use per well?

A. We didn't figure any definite quantity from the fact that most of those wells around there had been abandoned and they hadn't used distillate but I figured, if we got in tough going, we would have something to fall back on.

Q. Was that distillate some belonging to Aaron Ferer & Sons? A. Yes.

Q. Distillate that Aaron Ferer & Sons were going to bring on the property?

A. No. It was there on the property in one of the storage tanks we bought.

Q. Did this sale that you were contemplating or this purchase that you were contemplating include any oil? A. It wasn't excluded in our contract. [92]

(Deposition of T. H. Clements.)

Q. Did you expect to get much oil under this contract?

A. Yes.

Q. How much?

A. Well, for instance, we had one tank there, which was a 5000-barrel tank, which at that time we thought was full of distillate. We thought there was between 3,500 and 4,000 barrels of distillate but, as a matter of fact, it proved later on that it was about 80 per cent water; that there was a light film of distillate on top. We figured there was quite a little bit of distillate in the tanks but, when it came to a showdown, we didn't get the crude we thought we would get.

Q. Did any Richfield representative tell you that you were going to purchase any oil under this arrangement that you were then discussing? A. No.

Q. On what basis did you assume that you were going to purchase any oil under this arrangement?

A. Whenever you buy a bunch of tanks in a field, it is general practice that you get the oil that is in those tanks when you buy those tanks.

Q. This is general practice, you say? A. Yes.

Q. In which tanks was this distillate located?

A. The distillate was only in the one tank, in that 5400-barrel riveted tank. [93]

Q. Was this distillate in any of the tanks which Richfield excluded from sale under this contract?

A. I never examined the oil that was in the tanks which were excluded from the contract. I know there was oil in those tanks which were excluded but what the nature of the oil was in those tanks I don't know.

(Deposition of T. H. Clements.)

Q. But the distillate that you are speaking of was not located in the excluded tanks, is that correct?

A. The distillate in question was in the included tanks in the contract.

Q. That figure that you estimated would be the cost of abandoning these wells was an aggregate figure, is that correct? A. That is right.

Q. Covering how many wells?

A. Oh, we figured we would probably be able to abandon anywhere from 50 to 65 possibly.

Q. I don't quite understand, Mr. Clements, when you say you would abandon from 50 to 65. Was it contemplated by you at the time you were making this examination of the property that, if the wells were to be included in the transaction, you would abandon only a part of the wells?

A. There were certain wells we might not be able to abandon for the reason they might be of such a nature they would cost you more to abandon them than to leave them alone, in which case we were going to leave [94] those alone that wouldn't show any profit.

Q. How many of those did you think that there were?

A. We were guessing. We didn't know.

Q. How were you going to find out about that?

A. You don't know until you open it up and start to go in the hole.

Q. Would you have to put a mast on the hole and open it up before you could find that out?

(Deposition of T. H. Clements.)

A. The casing might have collapsed or it might have shifted or the hole might have filled up with mud. There are lots of reasons why certain wells wouldn't be proper to go into.

Q. Could you tell about any of the wells before you entered them?

A. No. When you go into a well, it is like a pig in a poke. You just work on the law of averages.

Q. So it was your intention, then, that the way you would start on this job would be to open up a well and go into it and, if you estimated at that time that the cost of doing the abandonment work would be more than the value of the casing that you would recover, you would not proceed with the abandonment work?

A. Unless you had gotten so far you couldn't back up.

Q. How would you go about finding out?

A. You would just have to try it, is all. [95]

Q. What would be your first operation on a well?

A. First, running your bailer to see what the condition of your hole was, to see if you could bail clear to the bottom.

Q. And, if you could not go to the bottom, then what would you do?

A. That is, to see how tough it was going to be to run a bailer in there and start to bail out. If you bailed out several days and saw you were not getting anywhere, you would call it a bad job and put the cap back on the hole.

(Deposition of T. H. Clements.)

Q. Are you familiar with the quality of the oil that is produced at Casmalia?

A. I have heard it called liver rather than oil.

Q. It is very heavy gravity, isn't it?

A. That is right.

Q. About 8 or 9 gravity, isn't it?

A. I don't believe it is as bad as all that. We had some oil in one of those tanks which was supposed to be more or less of an average and, as I recall, the figure was 11.6.

Q. Does the fact that there was heavy oil in those wells—would that make it harder or easier to bail out?

A. It depends on a lot of factors. It depends on whether the oil was clean or if it was emulsified and it would depend on whether any mud had shoved in with it and it would depend on temperatures. Temperature is a big factor [96] in that oil. Temperature is a big factor in the viscosity in those wells.

Q. Would the fact that those wells hadn't been producing since 1925 or 1926 make it harder to bail them out?

A. In all probabilities; yes.

Q. Then, you didn't know at that time how many of those wells you would want to abandon, is that correct?

A. We don't know even at this time.

Q. Did you know whether that field had been fully depleted, that oil field, under that property?

(Deposition of T. H. Clements.)

A. I didn't know about depletion but it was the general talk around the country that they had more or less stopped operations because it was too costly to operate and the character of the oil was too heavy and it wasn't a good market outlet.

Q. Are you acquainted with the history of those wells in that field? I mean the wells on the Richfield property. Or perhaps that question is too general. I will strike it out. Do you know when those wells were drilled?

A. Well, in general; yes. I believe some of the early ones were drilled in 1916 or 1917 and they were drilling up to about 1924, 1923 or 1924.

Q. Do you know when they last produced?

A. Not specifically but, in general, I think around 1925 or 1926.

Q. Did you ever make an estimate, based upon [97] your examination of that property, as to the quantity of recoverable oil still underground that remained at the time those wells were taken off production?

A. I am not a geologist.

Q. Do you have any information or knowledge about that? A. The thought never even occurred to me.

Q. But you did know that the wells were taken off of production because of a price and market factor?

A. I have been told that but I didn't know what the factors were.

Q. Did you know that in December of 1940, when you were discussing this transaction with Mr. Ferer, at the time you examined the property—

A. Did I know what?

(Deposition of T. H. Clements.)

Q. Did you know at the time you and Mr. Ferer were discussing the property on your visit to Casmalia, that same matter that you said you knew about, that the wells were taken off of production in about 1925 or 1926 because of a market and price condition?

Mr. Krasne: That is assuming facts not in evidence. The witness testified that the wells were taken off production because the quality of the oil was such that the wells could only be operated at a loss and that it was unprofitable to deal in that oil.

Q. By Mr. Paradise: Did you understand the [98] question? A. He answered it.

Q. Yes; but Mr. Krasne is not testifying. You are.

A. Well, again, I will have to go by hearsay because it is not first-hand knowledge. I wasn't on the property there when they shut down or I wasn't called in and consulted but I had heard that the Doheny people were having a hard time to produce the property and they had even gone to the trouble of experimenting up there and pumping hot distillate down some of the wells, in the hope of making the production of some of the adjacent wells climb.

Q. At the time you and Mr. Ferer were examining the property and discussing this matter of the abandonment of those wells— By the way, did you discuss this matter of abandonment of the oil wells with Mr. Ferer on that day?

A. We very precisely went over and estimated how many feet of pipe we could get out of the wells and cer-

(Deposition of T. H. Clements.)

tainly, when we discussed that, we had to discuss abandonment because that was part of the attendant difficulties, naturally.

Q. At the time you were discussing that with Mr. Ferer, did you either know or have reason to believe that the oil under that property, the oil pool or reservoir, had not been fully depleted and that those wells could again be produced or be operated for the production of oil?

A. It didn't sound very logical to think that they would produce again if after all these years they never made a move to produce them. [99]

Q. But you mentioned before that you understood the reason that they were taken off production in 1926 was because of the quality of the oil and the price at that time, is that correct?

A. And operative difficulties. I understood the difficulties in operation there were terrific and I understand the costs of operation and production were very high and it wasn't profitable.

Q. Do you know whether the requirements of the Division of Oil and Gas as to the abandonment of wells are stricter and more stringent where you are in an undepleted field than when the field has been completely depleted and all of the oil taken out?

A. The abandonment of oil wells has been more or less a human factor with the representative of the department in that particular field, I had always been told.

Mr. Paradise: Will you read the question, please?

(Question read by notary.)

(Deposition of T. H. Clements.)

Q. I don't believe you answered that question, Mr. Clements.

A. Well, I think as to the abandonment program in any oil field that the determining factor is the nature of the oil field and, as you say, the number of surrounding wells and many other factors, that is, if it is an undepleted field and there is a surrounding edge of marginal wells still pumping, it is a cinch they are going to be pretty tough on [100] your abandonment program.

Q. It was your intention, then, as I understand it, that in so far as the wells on the property were concerned you were going to enter those wells and abandon those which were profitable to abandon and not abandon those which you considered unprofitable to abandon, is that correct?

A. With the exception of one other stipulation, that, if we got into it so far where the State demanded it, we might have to abandon and spend a money outlay for those few wells which we couldn't profitably pull.

Q. If the State demanded it?

A. Yes; if the State demanded we clear them up entirely, we might have to do that. We might have to go back to those wells which could not be abandoned at a good profit and do it anyhow.

Q. Did you discuss that matter with Mr. Ferer?

A. I did.

Q. But, if the State didn't require it, you didn't propose to do it, is that correct? A. That is right.

Q. At what point would you know whether a well would be unprofitable to abandon? Was it just when you commenced your bailing operation?

(Deposition of T. H. Clements.)

A. Oh, no. As a matter of fact, you wouldn't know all of the answer to that until you had pulled probably a dozen wells. [101]

Q. And, if the results of the abandonment of the first dozen wells showed an over-all loss, then what was your intention at that time?

A. We didn't anticipate that they would show a loss. As I stated at the start of the interrogation, we figured that we would make a good profit off of them and we were not anticipating any loss.

Q. I thought you said you wouldn't know whether you had made a profit or a loss until you had abandoned some 10 or 12 wells?

A. You wouldn't know whether you had made a profit or loss on every well until you had gone into a dozen and learned by experience the type of well which wasn't profitable to continue abandonment on. In other words, there were certain wells with a relatively small amount of casing or pipe which you could pull out and others where there were gobs of pipe, you might say, that could be pulled out and you wouldn't know your breakdown point or which wells to avoid, which were swapping dollars or even losing you money, until you had gone into some representative of the extremes to establish your cost factors.

Q. And, if you had abandoned 10 wells and determined that you had made no profit on those 10 wells, then what was your understanding as to what you intended to do?

A. We never discussed that angle because we didn't consider that. [102]

Q. You didn't consider that at all?

A. No.

(Deposition of T. H. Clements.)

Q. But you did consider that it might become desirable to abandon some wells and not others, is that right?

A. Yes. In other words, we knew that there would be some wells, which would have a minimum of casing, which might not prove very profitable.

Q. Was any of this discussed with Richfield?

A. No.

Q. Or with any Richfield representative?

A. The answer is no.

Q. You never asked any Richfield representative which wells it was willing to have abandoned and which ones it was not willing to have abandoned, is that correct?

A. I never discussed it with them.

Q. Did you ever discuss with any Richfield representative the fact that you might desire to pull certain wells and not desire to pull others?

A. I never discussed it.

Q. Did you intend in connection with the right that you say you expected to get to pull this recoverable casing to assume an obligation to Richfield to abandon those wells?

A. There was no question in our minds of an obligation. If we bought everything on the property in the way of pipe, there was no obligation, as long as we had paid cash for it, between ourselves and Richfield. The obligation would be to [103] straighten out any difficulties in the abandonment between ourselves and the Bureau of Mines.

Q. The Bureau of Mines is not the owner of that property, is it? Well, I think that is obvious. The Bureau of Mines is a general regulatory body that has charge of the abandonment of oil wells, is it not?

(Deposition of T. H. Clements.)

A. Among other duties; yes.

Q. Did you consider at that time the fact that the Richfield Oil Corporation as the owner of an undepleted reservoir of oil would have some voice in the abandonment of those wells in addition to any direction to you from the Division of Oil and Gas?

A. When the Richfield say they want to sell everything on the property and they are going to go ahead and make a good piece of cattle grazing land out of it and are even going to take the storage tanks off of the property—the idea of considering it as a future, potential source of oil never entered our heads.

Q. Are you talking now about a conversation you had with some Richfield representative where that was said or is that your surmise?

A. In your contract there it stipulates that you have got to be very careful to keep the fences up for cattle; that you had to clean up all of your sumps and you had to go ahead and remove anything that cattle could fall into.

Q. Going back to your answer to the preceding [104] question, I will again ask you if what you stated there, and, if you don't recall it, I will ask the reporter to read it to you, was the substance of a conversation between you and some Richfield representative or if that was merely your surmise?

A. That was the conversation held in this room and you were present.

Q. Who else was present, Mr. Clements? A. Mr. Davis and Mr. Ferer and myself.

Q. To what part of that conversation are you referring?

(Deposition of T. H. Clements.)

A. When we were discussing the abandonment of this property, we at that time said, "Now, you are leaving temporarily those storage tanks on that property. We are interested in buying them. Can't we buy them to make the job 100 per cent complete?" And the answer was, "No; the production department wants to take those over to Maricopa."

Q. Who was it said that?

A. Mr. Davis, who sat in that chair.

Q. You mentioned the fact that the property was to be used thereafter by Richfield for cattle grazing. There is no reason why the property cannot be used for oil production even though it is being used for cattle grazing, is that correct?

A. If it is going to be used for oil production, why would they remove from it production tanks, pipe lines, [105] loading rack facilities, boiler facilities and house facilities? Why would everything be removed from the property?

Q. Mr. Clements, I am not asking for your argument on the matter but merely for answers to my questions.

A. The answer is that those are the questions that led us to form definite conclusions.

Q. You are, of course, acquainted with the condition of those boilers and tanks or what the condition was at the time this contract was made?

A. Both before and afterwards.

Q. Were those suitable for present production operations? Was the condition of those facilities suitable for present production operations?

(Deposition of T. H. Clements.)

A. The pipe lines were perfect.

Q. What about the tanks?

A. Some were good and some bad.

Q. And the boilers?

A. For the purpose for which they were used primarily, which was for heating purposes on these gut lines, they could be used another 50 years.

Q. They were how old, Mr. Clements?

A. Most of the boilers had been put in there from 1917 to 1925.

Q. And those items of equipment that you just mentioned had not been in operation for over 15 years, isn't [106] that correct?

A. The boilers had not been depreciated in quality. They were all right for low pressure steam service, which they were originally installed for.

Q. This intention of yours of abandoning only part of the wells and not abandoning others you say was never discussed with the Richfield? A. No.

Q. I don't recall your answer to one question. Did you say that you intended or did not intend to assume an obligation to Richfield to abandon those wells?

A. I said in my mind I didn't see any obligation, after we had bought everything there, as to what happened to it so long as we didn't go ahead and interfere with the surface condition of the property. It was stressed in the contract and all of the conversations of abandoning the property and leaving it in good level shape so that cattle could not fall down the holes or otherwise put up barriers of harassment for them.

(Deposition of T. H. Clements.)

Q. Did it occur to you that the reason of the discussions as to the maintenance of the surface condition of the property was primarily because Richfield didn't have any idea that you intended to purchase the casing in the wells or to abandon any of those wells?

A. The idea never occurred to me.

Q. You did not then intend to assume an obligation to [107] abandon any one or more wells, is that correct?

A. I don't see that there was any obligation to Richfield if you once buy something.

Q. You did intend to assume an obligation to clean up the property, did you not, the surface of the property?

Mr. Krasne: At what time?

Q. By Mr. Paradise: At the time the negotiations for this contract were being conducted and before the contract was signed.

A. We were going to live up to all of the obligations both to the State government and all liabilities attendant on the abandonment of that property and so stipulated and so signed it and executed it in that contract.

Q. Those obligations in your mind included only an obligation to clean up the surface but no obligation with respect to the abandonment of the wells, is that right?

A. Certainly, the obligation is there. I am no lawyer but I thought the obligation lay between A. Ferer & Sons and the Bureau of Mines, their satisfaction of the correct procedure and method of that abandonment.

Q. Did you think, if the Bureau of Mines was satisfied with any particular type of abandonment, that would also

(Deposition of T. H. Clements.)

be satisfactory to Richfield as the owner of an undepleted oil field and that Richfield would have no interest in the matter?

A. I didn't think that the Richfield considered it as [108] undepleted. I thought that was a fifth wheel they had accumulated from the Doheny interests when they bought it over and that they were sorry they had it.

Q. That was just your thought in the matter, was it not? A. Yes; my thought.

Q. You have no knowledge of the valuation Richfield now places and has placed upon that property on its books, is that correct? A. None whatsoever.

Q. All this that you have been stating as to your examination of the property and your discussions with Mr. Ferer occurred on the first day when you went up to the property with Mr. Ferer, some time in December, 1940, is that correct?

A. Will you read that question?

(Question read by notary.)

A. It was the first time we had discussed the procedure or the pro and con of what we had to do on the pulling of the pipe in those wells.

Q. I was merely trying to identify the date of this testimony that you have just given about your examination of the property. These conversations and examinations took place on that date when you and Mr. Ferer visited the property, did they?

A. Oh, no. You are covering a pretty wide range there. [109] I had been on that property probably 30 or

(Deposition of T. H. Clements.)

40 times prior to the time I went over the property with Mr. Ferer and I certainly would form conclusions about a lot of things prior to that.

Q. Let's take that step by step. Before that date in December with Mr. Ferer, I believe that you told me that you had not been on the property for five years, is that correct? A. No; that isn't the statement I made.

Q. I am in error on that. You were on the property and saw the work that Mr. Anderson was doing in pulling down the derricks?

A. No; I didn't say I saw him pulling down the derricks. I said I saw some of his crew cleaning up the debris from some of the derricks. But I stated before I had been on the property several times. As a matter of fact, I was trying to make a deal for part of the equipment there and made several trips in there and had taken dimensions and made reports on these various items which I had attempted at various times to purchase.

Q. Was that the first time that Mr. Ferer went up on the property with you?

A. That is the first time he went to the property with me.

Q. The time we have been discussing?

A. Yes; in the early part of December. [110]

Q. Subsequent to that time did Mr. Ferer and you again visit the property?

A. Not prior to the signing of the contract, I don't believe. Well, wait a minute. I think he put up a deposit but the contract was not drawn. I think he had one of his brothers from the east with him and I think we

(Deposition of T. H. Clements.)

went up there and looked over the property on a Sunday. There was a party of us. And I believe this time that we went up lay somewhere between the time the initial deposit on the transaction had been put up and prior to the signing and execution of the contract. There was a time interval in there. I may be wrong in my dates. I am just thinking out loud on that one.

(Short recess.)

Q. At that second visit that you mentioned, that you made with Mr. Ferer and his brother from the east, was there any Richfield representative along on your inspection trip? A. No.

Q. Had you talked to any Richfield representative between your first visit to the property with Mr. Ferer and the second one that you mentioned?

A. I called up Davis once or twice and asked him who was the high bidder and I think Davis called me up and said we were the high bidder and that we would get together at some near date or something like that. I think there were two or three telephone conversations.

Q. Did you, yourself, make any other inspections of [111] the property between those two visits by Mr. Ferer?

A. No.

Q. Did you make any visits to the property after the second visit of Mr. Ferer and before the signing of the contract? A. I don't recall any; no.

Q. Did you ever inspect the property with Mr. McGahan of Richfield?

A. Not prior to the signing of the contract.

Q. Not prior to the signing of the contract?

(Deposition of T. H. Clements.)

A. No.

Q. Do you know Mr. McGahan? A. Yes.

Q. Did you ever talk to him at Casmalia about this transaction?

A. Never at Casmalia before the contract was signed but I have talked to him at his office in Long Beach several times.

Q. Don't you recall an incident while these negotiations were under way and while you were making your bid or making up your bid for this purchase; that you visited Casmalia one afternoon and you and Mr. McGahan went up on a hill and he pointed out on a map various tanks and boilers and other property that was to be sold under this arrangement?

A. No. I went over with him on such an occasion but it was after the signing of the contract. [112]

Q. After the signing of the contract? That was not before the signing of the contract? A. No.

Q. Can you fix the date of that?

A. Some time the middle or latter part of January.

Q. In the middle or latter part of January?

A. Yes.

Q. The contract was signed on January 17th?

A. That is right.

Q. And it was not prior to that time? A. No.

Q. What occurred when you and Mr. McGahan discussed this transaction at Casmalia?

A. I asked him to point out the limitation of the retained pipe around the tanks and I think we discussed at

(Deposition of T. H. Clements.)

that time about the use of some of those bunk houses up there which, peculiarly, I don't think are excluded in the contract, but when we got the map back were excluded on some current transaction. And then we discussed certain pipe line facilities that came through there, which were leased to the O. C. Fields Gasoline Company. In other words, they had a lease arrangement with the Richfield on one or two of those storage tanks below and they were pumping or gravitating down some of the oil from some of the canyon wells, I believe, into one of those storage tanks and then regravitating it out across the Morganti lease to a shipping pump. And the [113] exact location of those lines which were retained and had to be retained to facilitate that oil movement had been merely conversation. They hadn't been pointed out to us specifically and I wanted to get straightened out as to where those lines lay.

Q. Did Mr. McGahan point out to you the gas lines to certain wells that were to be excluded from the sale?

A. I don't recall. He pointed out certain water lines that had to be kept there on the property.

Q. Do you recall that certain gas lines to certain wells were to be excluded from the sale, from the property to be sold?

Mr. Krasne: The ones set forth in the contract or outside of that? Are you talking about the gas lines being excluded by the terms of the written contract or that were to be excluded otherwise?

Mr. Paradise: What was my question?

(Question read by notary.)

(Deposition of T. H. Clements.)

Q. Do you recall that the contract provides that certain gas lines are to be excluded from the sale?

A. It seems to me that it does.

Q. Prior to the time the contract was signed, with whom did you have any discussion about those gas lines? And when I say with whom, I mean any Richfield representative.

A. I don't believe we ever discussed it.

Q. It was never discussed? [114]

A. I don't recall it.

Q. When did you first hear about the exclusion of gas lines?

A. When we were digging up the lines up there, one of the foremen said, "The Richfield want that 2-inch line left in over there." And I said, "Well, hell, it is an old shot line. We will leave it alone if they want."

Q. Is that the first time you heard about the exclusion of gas lines?

A. That it the first time I recall.

Q. Did you read this contract at the time it was signed?

A. You were sitting there and I read it right here along with Mr. Ferer.

Q. When you read it, you did not see that there was an exclusion of certain gas lines?

A. I don't recall it.

Mr. Krasne: If you want to see the contract for the purpose of refreshing your recollection, Mr. Clements, I am sure he will let you see it.

A. He asked me if I remembered it. I don't remember it. It may have been in there. I don't know.

(Deposition of T. H. Clements.)

Mr. Paradise: I would like to take advantage of Mr. Krasne's suggestion and show the contract to the witness.

Mr. Krasne: I presume counsel is directing your attention to subdivision (h) of the first paragraph of the [115] contract.

Q. By Mr. Paradise: You might read that out loud or I will read it. Subdivision (h) provides as one of the stated exceptions from the contract, "gas pipe lines connecting wells on the land above described to the superintendent's house." Do you recall any discussion prior to the signing of the contract of those gas lines?

A. I never discussed them with anybody prior to the signing of the contract.

Q. You didn't know at the time the contract was signed that those gas lines were excluded? A. No.

Q. Mr. McGahan never pointed them out to you?

A. No.

Q. The gas lines? A. No.

Q. Either before or after the signing of the contract, is that correct?

A. No. The first occasion I knew about it, when it was called to my attention, was when the foremen up there said they wanted a certain 2-inch gas line left there and I went over and looked at it and there was a piece of 2-inch pipe in very bad condition there, and I said I wouldn't fight with them over it.

Q. In any discussion that you had with any Richfield representative or employee prior to the signing of the [116] contract, were you ever furnished any list or inventory of the specific items of facilities and equipment to be sold under this transaction?

(Deposition of T. H. Clements.)

A. No; I wasn't furnished it. McGahan said one day in his office, "I have got a list here that you can look at of what is excluded," and I picked it up and looked at it and in it it enumerated these stills and some 4-inch pipe to the O. C. Fields Company.

Q. Did that list include the items to be sold as well as the items to be excluded?

A. No. These were just the exclusion items. I asked McGahan for an inventory on the thing and he says, "I can't give you one." We asked for it but we never got an inventory.

Q. When was that?

A. It was in the early part of December, when Harold Davis told me to get in touch with McGahan and they were about ready to call for bids; and I went down to McGahan's office and asked for a physical inventory on the property so we could bid on it, and he said, "We haven't got a prepared inventory but we have got certain items excluded and here is what they are," and he passed over the sheet and I read it.

Q. Was there any mention at that time of the wells on the property or the casing in any of the wells?

A. There was no detailed discussion about any of the [117] items on the whole property, wells or anything else.

Q. Didn't Mr. McGahan tell you that the tanks were to be left remaining on the property for the purpose of future production operations, those excluded tanks that are listed in the contract?

A. The answer is no. At that first conversation the six excluded tanks were some of the items listed and

(Deposition of T. H. Clements.)

McGahan merely said, "These are not for sale." But in later conversations with Mr. Davis, we asked if we could buy them and then we got the answer no; they were to be used over at Maricopa.

Q. Neither Mr. McGahan nor Mr. Davis ever stated to you that those tanks were to be left upon the property for future production purposes? A. Heavens, no.

Q. What other conversations have you had about this matter with any Richfield employees or representatives other than the conversations that you have referred to?

A. What matter?

Q. The transaction of purchase by you, Aaron Ferer & Sons, and sale by Richfield of equipment and facilities at Casmalia.

A. Subsequent to signing the contract?

Q. Prior to the contract. A. None.

Q. You recall a conversation in my office here, do [118] you not, on the matter?

A. Do you mean when we came up to execute the contract with Mr. Ferer?

Q. No; before the contract was prepared.

A. Who was present?

Q. Well, do you recall the conversation?

A. No; I don't.

Q. You don't recall any meeting? A. No.

Q. Do you recall how many times the contract and the drafting of the contract were discussed at any meetings at which I was present?

(Deposition of T. H. Clements.)

A. I only recall the one time. I didn't know there was any other time.

Q. Had the contract been prepared at that time or was it still to be prepared?

A. As I recall it, when we came up here, you had prepared the contract and Mr. Ferer and I sat here and read it over and Mr. Ferer asked that certain changes be made in the contract, and later those contracts were mailed out for execution, I believe. I don't think there was another conference held. That is my impression on it. And I don't remember any meeting in this office other than that one.

Q. You don't recall any prior meetings at all in this office?

A. No. We had a prior meeting down in Harold Davis's [119] office there but I don't recall any meeting here.

Q. Who were present at that prior meeting in Harold Davis's office?

A. I think Mr. Ferer and Mr. Davis and myself. I don't recall anyone else. Maybe McGahan was there. I don't know. I don't remember it.

Q. Do you recall whether I was present?

A. I remember Davis calling you over the telephone.

Q. At that meeting in Mr. Davis's office, at which were present you and Mr. Ferer and Mr. Davis and perhaps Mr. McGahan, but no others, as I understand it,—

A. Not that I remember.

Q. —was there any discussion whatsoever of the wells on the property or the casing in the wells?

(Deposition of T. H. Clements.)

A. The whole conversation was the items excluded. At no time was discussed the items particularly which were being sold. In other words, the context of the conversations all the way through was of excluded items and to clarify the issue on excluded items.

Q. What was the issue on excluded items?

A. To be sure everybody had in mind what were the excluded items and how far it went, for instance, pipes, how far intercommunicating pipes went and all of that sort of thing.

Q. Do you mean the pipes to the stills?

A. No; the pipes to the tanks, the pipes which O. C. [120] Fields was using.

Q. You never inquired of any Richfield employee at that meeting that you speak of concerning the wells or the casing in the wells?

A. Not with them at that time, no more than we ever discussed the character of the tanks or the character of the pumps or the character of the brick. None of that was discussed.

Q. Did you discuss the abandonment of the wells?

A. We did not.

Q. You say that following that there was a meeting in my office? A. Yes.

Q. At which a draft of the contract was presented for your examination? A. Yes.

Q. Do you recall on what date that occurred?

A. It was somewhere between the 7th and the 15th of January, I believe.

(Deposition of T. H. Clements.)

Q. Who were present at that conversation?

A. Yourself, Mr. Davis and Mr. McGahan, I think, and Mr. Ferer and myself.

Q. At that conversation did both you and Mr. Ferer read the contract?

A. Yes. He sat there and I sat here and we both read it. [121]

Q. You stated that, after reading the contract, Mr. Ferer requested certain changes?

A. That is right.

Q. Do you recall what was said?

A. Not specific words but I remember Mr. Ferer saying, "Well, you are selling everything on the whole lease and this certain phrase in here is ambiguous. It isn't all-inclusive so that there is no ambiguity in the thing." So you went ahead and put in the words "all metal". I think the phrase was "all metal and lumber." And I think that phrase was substituted in one paragraph.

Q. Substituted for what?

A. For some other phrase which Mr. Ferer interpreted as being a little ambiguous. I think that was the only change suggested. That is the only one I remember.

Q. Was there any discussion at that time as to what types of equipment were referred to by the word "metal"?

A. There might have been some discussion at the time. I can't recollect it all, although I do remember the substitution of that paragraph, or in that paragraph. And

(Deposition of T. H. Clements.)

there was probably some conversation between you and Mr. Ferer at the time but I am afraid I don't recall the context of it. There probably was but I don't remember it.

Q. Did you participate in that conversation?

A. I don't think I said anything. I think Mr. Ferer did all of the talking about it. I don't think I said [122] anything.

Q. Do you recall at the time that the word "metal" was used that specific types of equipment were being discussed in that same connection?

A. Have you got that preliminary contract present here? I think, if I looked at that paragraph and saw it modified, it might refresh my mind as to the context of the conversation at that time. I don't remember it. If you have got the preliminary contract, I might be able to look at it and remember it, except I remember that that conversation took place and the change was made.

Q. All I have here, Mr. Clements, is a draft of the contract that is attached to the amended complaint in this action. Mr. Krasne, do you have any document of the sort that Mr. Clements wants to refresh his recollection with?

Mr. Krasne: No; I have never seen it.

Q. By Mr. Paradise: Do you recall, Mr. Clements, that the discussion as to metal and lumber was in connection with loose scrap metal lying on the ground?

A. Oh, heavens, no. That word "metal" was all-inclusive, whether the metal was above the ground or below the ground.

(Deposition of T. H. Clements.)

Q. Are you repeating a conversation or is this merely your own surmise?

A. That was the context of the conversation held. We were not discussing scrap metal at that conversation that [123] I remember.

Q. Will you please, then, repeat the conversation and state what was said by each person?

A. Can I see that contract and see that paragraph?

Q. Certainly.

A. I want to see the paragraph that I was questioning about relative to where we substituted the phrase "all metal and lumber".

Q. I will point out to you, Mr. Clements, that on page 2 of the contract, in paragraph 1, the phrase "metal and lumber" is used. A. Oh, yes; I see it.

Q. What I have asked you is what were the conversations concerning that point.

A. Well, I may be wrong on this but this is the impression the way I remember it—

Q. I am not asking for your impressions but your recollection of the conversation.

A. I can't give you it verbatim and I don't think anybody could. As I recall it, Mr. Ferer spoke to Mr. Davis in this chair over here and said, "Mr. Davis, this contract includes everything on that property, so, to clarify that, can we not have this paragraph changed and the words 'all metal and lumber' added to it to clarify the whole issue?" And I think Mr. Davis turned around to you and said, "Well, I don't see any objection", and I think

(Deposition of T. H. Clements.)

you agreed with him. [124] I think that is the way the thing occurred and I think that is the way the conversation was held. I don't recall personally of making any remarks in connection with it. Mr. Ferer carried the conversation along.

Q. You stated in answer to a previous question that it was stated that metal would include all metal both under the ground and above the ground. Was there any conversation of that sort at all?

A. No. We merely said everything there on the property.

Q. Was there any conversation at all about anything under the ground?

A. Well, the answer to that certainly must be yes because we were certainly discussing pipe lines which lay under the ground.

Q. I am not asking for what certainly must have occurred. I am asking you what did occur. Was the word "underground" ever used as you have just said?

A. Well, in the general conversation we certainly must have discussed underground piping.

Q. Not what you must have discussed but what you did discuss.

A. I don't remember any particular conversations relative thereto.

Q. There was no mention of the word "underground", was there?

A. I won't say there was or wasn't. [125]

Q. Do you recall that there was and, if so, by whom?

(Deposition of T. H. Clements.)

A. I merely got that general impression. I can't remember a specific conversation over a period of a year.

Q. Isn't a fact that there never was a mention of underground and that the only items of equipment that were being discussed were items on the surface of the ground?

A. That is not true.

Q. Wherein is that incorrect?

A. Two-thirds of the pipe lines which we were buying were buried underground.

Q. They were exposed for a considerable portion of their distance, were they not?

A. Heavens, no.

Q. They were not exposed?

A. No.

Q. None of the pipe lines were exposed?

A. Some of them were. I said two-thirds of them were not.

Q. They were all connecting with those which were exposed, were they not?

A. Not necessarily. There were lines, for instance, which would go up the valley and they would go three-quarters of a mile and you couldn't find them unless you dug down two feet.

Q. Pipe lines are specifically mentioned in the contract, are they not, as being included in the sale? [126]

Mr. Krasne: I think the contract speaks for itself, Mr. Paradise. The question was whether any items that were underground were discussed and I think the witness has answered that.

(Deposition of T. H. Clements.)

Q. By Mr. Paradise: Is it not a fact, Mr. Clements, that the only item that is included in the contract, any portion of which was underground, is the pipe lines connecting the various wells?

A. Will you state that question again?

(Question read by notary.)

Mr. Krasne: By that question, Mr. Paradise, —

Mr. Paradise: I will strike that. It may be confusing.

Q. Is it not a fact, Mr. Clements, that in the discussion the only items, any portion of which were underground, which were mentioned were the pipe lines?

Mr. Krasne: I object to that on the ground it assumes facts not in evidence. This witness has testified that the only items that were specifically discussed were the items that were excluded; that there was no discussion about pipe lines or pipe in the wells or any other item that was included in the conveyance.

Mr. Paradise: I think, Mr. Krasne, you are referring to a different conversation, one of the conversations that occurred at an earlier point.

Q. At this conversation was there any mention of any other items? [127]

A. At which conversation, that took place where?

Q. This conversation we are talking about that took place in my office, the one when you were examining the contract and were discussing this phrase "all metal and lumber".

A. That conversation, again, largely rotated around the fact of certain items being excluded. As a matter of fact, at that conversation it was kind of hazy in

(Deposition of T. H. Clements.)

Mr. Davis's mind and your mind relative to the tanks or the stills which O. C. Fields got and how much pipe they got. And, as a matter of fact, there was a telephone call made from this room, I remember, to clarify the issue. In other words, the thing was a clarifying conference to see about the excluded items.

Q. Were there not also items discussed to be included as well as those to be excluded?

A. I don't remember any specific items so included in the conversation.

Q. Was the telephone conversation that you spoke of not a telephone call of Mr. Davis to the Casmite Company? A. Yes, sir.

Q. To determine at what point they were going to cut off their connections to the stills?

A. That is right.

Q. At the conclusion of that conversation, was there not a discussion in this room among those then present about [128] the inclusion in the contract of all the metal supports to those stills? A. Yes.

Q. Was there not also discussed in that same connection the loose scrap around the refinery, the corrugated iron sheets and wire lines and the scrap heap, as items to be included in the contract?

A. Well, I don't remember any conversation at that time about the wire rope coming up. The question was raised about certain big sheets of metal, about three-quarters of an inch thick and about 10 feet by 20, laying over to the refinery site, and Mr. Davis said those sheets went to O. C. Fields on their tank deal. That is the only loose metal that I remember being discussed.

(Deposition of T. H. Clements.)

Q. Was there not discussed at the time as being included in the contract the various overhead lines and steam lines in connection with the refinery property or I mean in connection with the refinery structures?

A. No. That was all in connection with the question of how much O. C. Fields got. We had previously included all of those lines in our original estimate of what we were going to get.

Q. Did you not state at that time, Mr. Clements, that you wanted to get under this contract the various overhead lines connecting the various stills and the various supports for the tanks and other property that the Casmite Company [129] had purchased and you also expected to get under this contract a lot of loose iron scrap metal around the refinery structures?

A. The last part of your question I can't answer. The first part of the question, yes.

Q. Weren't those things the matters which were being discussed when Mr. Ferer asked for the inclusion of "metal" in the contract?

A. Why, no. In other words, the way Mr. Ferer was thinking——

Q. I don't care for your surmise as to what he was thinking but what did he say?

A. He asked for the contract to be changed because he wanted it to be all-inclusive so as to clear up any ambiguity as to what we were to get.

Q. Do you recall Mr. Ferer reading this list of pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors and tanks, and stating that the items so

(Deposition of T. H. Clements.)

mentioned did not include the supports, steel supports, and overhead lines and scrap metal that was lying around loose, and that that was the reason he wanted the words "metal and lumber" put in, so that he could get that scrap metal and the other items as well as the loose lumber on the property?

A. I think Mr. Ferer did mention that certain items were not included in the contract and he wanted the contract changed so it would be inclusive of everything. I believe [130] that is the way he put it.

Q. You don't answer my question, Mr. Clements. I will ask the reporter to read it.

(Question read by notary.)

A. I don't think those were his exact words and I don't think that was the general context of his conversation or what he intended to imply in its entirety.

Mr. Paradise: I move to have that stricken as a conclusion of the witness.

Q. Now, will you try and recall what was said?

Mr. Krasne: I think the question has been asked and answered on several occasions. The witness has testified that Mr. Ferer stated in this room that the contract might be somewhat ambiguous with respect to this general statement of what was to be included and Mr. Ferer said it was the intention of the parties that everything on the lease was to be included except for the items specifically excluded, and that he suggested that that ambiguity would be clarified if you would include the other words "all metal and all lumber", and this witness has on two occasions said that that is substantially what Mr. Ferer said at the meeting.

(Deposition of T. H. Clements.)

Q. By Mr. Paradise: Do you recall anything more clearly about the conversations than you have stated?

A. No. I think it would be a reiteration of what I have previously said. I think Mr. Ferer addressed his remarks to Mr. Davis and said that, inasmuch as there were [131] numerous items which could not be included in the contract, that no contract could be drawn to include all of the items, and, no matter how thoroughly you drew the contract, he wanted the contract to be drawn all-inclusive and, if those two words were substituted, he would be satisfied, even though he didn't have a lawyer present, that the thing would be the way we had it in mind.

Q. Did either you or Mr. Ferer state at that time in connection with Mr. Ferer's suggestion that the words "metal and lumber" be added that the word "metal" referred to the casing in the wells?

A. Will you read the question, please?

(Question read by notary.)

A. Could I bother you again? I want to get the verb in the first part of the paragraph.

(Question reread by notary.)

A. There was no conversation held by me and I don't believe by Mr. Ferer outlining the all-inclusive items which would be included under the words "metal or lumber." But Mr. Ferer asked that that paragraph be substituted to clarify the issue in its entirety.

Q. When Mr. Ferer asked that the word "metal" be included and when that entire subject matter was being discussed at that conversation, was there any mention whatsoever of either the casing in the wells or the wells themselves?

(Deposition of T. H. Clements.)

A. No; nor the tanks nor the valves nor the fittings. [132]

Q. But there was mention at that time, was there not, of the supports for the stills and the overhead lines and the loose corrugated iron and other metal scrap lying around lose on the surface of the property?

A. I don't think Mr. Ferer would say anything about loose corrugated iron because there wasn't any on the property.

Q. I am not asking you for what he would have said. Will you please confine yourself to the conversations?

A. Yes. I don't think Mr. Ferer at any time said anything about any lose corrugated iron because there wasn't any there.

Q. Do you recall that there were discussed those other items that I mentioned at that meeting?

A. I know Mr. Ferer said there were a lot of items which were not included in this contract and he would like to have it all-inclusive so they would be included in there.

Q. Did he say what those items were?

A. No. He said too numerous to enumerate in the contract.

Q. Did he give any illustrations at all?

A. I think he gave one or two illustrations.

Q. What were they?

A. Well, for instance, I think he mentioned the revetements up there in the canyons. I think that was mentioned and miscellaneous steel. [133]

(Deposition of T. H. Clements.)

Q. Miscellaneous steel of what nature? Was it scrap lying on the surface of the ground?

A. No. I think he mentioned about the walkways, for instance, over those stills to O. C. Fields and I think he mentioned that in the warehouses there were numerous items. He brought that out, as I recall, pretty definitely. He said, as I recall, "In this warehouse there are nipples and valves and fittings in the warehouse stock. They are not included in the contract. There are lots of items like that. And, if we don't have this all-inclusive paragraph, you haven't got a definite contract."

Q. There was no mention of casing, however?

A. No; I don't remember it.

Q. Pardon me?

A. I don't think we ever did use the word "casing". Both Mr. Ferer and myself in the second-hand business very seldom use that word. We use the word "pipe" and I am sure he used the word "pipe" plenty of times.

Q. Was there any mention of wells?

A. I don't think they were even discussed.

Q. When he said pipe, he was referring to the pipe lines, was he not?

A. No. Anything that is pipe is pipe, whether it came out of the well or whether it was from there over to a tank.

Q. You mentioned that you are in the salvage business [134] and that you use the word "pipe" instead of "casing", is that correct?

A. Yes; largely. We very seldom use that word "casing".

(Deposition of T. H. Clements.)

Q. How familiar with the oil business are you?

A. Well, I am a graduate of the University of California in petroleum technology and I have specialized in it.

Q. You are familiar then, with the fact, Mr. Clements, that steel that is cemented in a well is referred to in the oil industry as casing, are you not?

A. Not when you take that pipe out and salvage it and sell it on the street for pipe line service, which we intended to do in connection with this pipe. If it is not casing that you could use today in modern drilling operations——

Q. I am not talking about what its use would be after it had been removed but, when it is cemented in the well, it is referred to in the oil industry as casing, is it not?

A. We think of it in terms of the purpose for which we are going to apply it after we get it.

Q. I am not asking you that. I am asking you if, when it is cemented in the well, it is referred to in the oil industry as casing.

A. Pipe in the well is referred to in the oil industry as casing; yes.

Q. You mentioned at the beginning of this discussion [135] that your transaction with Mr. Ferer was that you were to get one-third of the net profits, is that correct?

A. That is correct.

Q. Has there been any accounting of the net profits as yet?

A. There have been no net profits yet. It has all been net loss so far.

(Deposition of T. H. Clements.)

Q. The work is not as yet concluded, is it?

A. We haven't been able to finish cleaning up the property because of the fire warden's stipulations.

Q. And if at the conclusion of the work there is a net profit, you still expect to get one-third of that, is that correct? A. Surely.

Mr. Paradise: I think that is all.

Cross-Examination.

Q. By Mr. Krasne: Before you took Mr. Ferer out to the property in question for the first time, after you had discussed the dismantling of this field with Mr. Davis and with Mr. McGahan, did you intend that in having Mr. Ferer make an offer for the property the offer would embrace the pipe in the wells as well as the other producing and refining equipment on the property?

A. Yes.

Q. Did Mr. Davis or Mr. McGahan or any other official [136] or employee of Richfield Oil Corporation ever tell you, prior to the execution of the contract, that Richfield Oil Corporation did not intend to sell the pipe in the oil wells on the property? A. No.

Q. If I understand your answers to Mr. Paradise's questions, the question of the pipe in the wells was never specifically discussed at any time prior to the execution of the contract by you or by anyone in your presence with the Richfield people, is that correct?

A. No; it wasn't.

Q. Prior to your taking Mr. Ferer to the property and prior to the execution of the contract, did Mr. Davis or Mr. McGahan or any other official or employee of

(Deposition of T. H. Clements.)

the Richfield Oil Corporation ever tell you that they intended to sell only such producing and refining equipment as was upon the surface of the property up there?

A. No.

Q. Did you have any knowledge from any source whatsoever that it was the intention of the Richfield Oil Corporation in signing this contract not to include in the conveyance to Aaron Ferer & Sons the pipe in the wells on the property?

A. No.

Q. Did you suspect that the Richfield Oil Corporation did not intend to sell by that contract the pipe in the oil [137] wells?

A. No.

Q. Prior to the execution of the contract, did you have any knowledge from any source whatsoever that Richfield Oil Corporation intended to sell to Aaron Ferer & Sons only such producing and refining equipment as was upon the surface of the land on their property?

A. No.

Q. Did you suspect that Richfield Oil Corporation in making the sale to Aaron Ferer & Sons, intended that there should be included in the sale only such producing and refining equipment as was upon the surface of the land out there?

A. No.

Q. Was there ever any oral contract entered into between Richfield Oil Corporation as seller and yourself or Richfield Oil Company and Aaron Ferer & Sons, in your presence, by the terms of which oral agreement the pipe in the oil wells—I will strike that question. The only contract that you have any knowledge of between Richfield Oil Corporation and Aaron Ferer & Sons relating to the sale by Richfield Oil Corporation and the purchase by

(Deposition of T. H. Clements.)

Aaron Ferer & Sons of producing and refinery equipment and facilities on the Casmalia property is the contract expressed in the written contract dated January 17, 1941, isn't that a fact?

A. Could I have the first part of that question read?
[138]

(Question read by notary.)

Mr. Paradise: I object to that as calling for a legal conclusion of the witness.

Q. By Mr. Krasne: Will you answer the question?

A. Yes.

Q. Were you ever present at the making of any oral contract between Richfield Oil Corporation and Aaron Ferer & Sons with respect to the producing and refining equipment on the Casmalia property?

Mr. Paradise: The same objection.

A. Yes; I was present at a conference at which there was an oral stipulation, which was followed up with a typewritten memorandum, which was to be held as the context of the contract prior to the drawing up and execution of the main contract.

Q. By Mr. Krasne: Were you ever present at any meeting between Aaron Ferer & Sons and any representative or employee of Richfield Oil Corporation at which it was agreed by the parties that the pipe in the oil wells was not to be sold by Richfield Oil Corporation to Aaron Ferer & Sons?

Mr. Paradise: I object to that as calling for the conclusion of the witness on a legal matter of the interpretation of a contract. A. No.

(Deposition of T. H. Clements.)

Q. By Mr. Krasne: Prior to the execution of the written contract dated January 17, 1941, did you ever hear [139] any representative of Richfield Oil Corporation state to Aaron Ferer & Sons or any representative thereof that the pipe in the oil wells was not being sold to Aaron Ferer & Sons? A. No.

Q. Did you ever hear Mr. Morris Ferer or any other representative of Aaron Ferer & Sons tell any representative of Richfield Oil Corporation that they were not purchasing the pipe in the oil wells? A. No.

Q. Was it always your understanding and belief, prior to the execution of the written contract dated January 17, 1941, that Aaron Ferer & Sons was purchasing and Richfield Oil Corporation was selling all producing and refining equipment on the Casmalia property, of every kind and nature, except for the items that were specifically excluded in the written contract? A. Yes.

Q. Mr. Paradise on numerous occasions during the taking of your deposition here referred to estimates that were made by yourself and Mr. Ferer the first time you took Mr. Ferer up to the Casmalia property. Were those so-called estimates precise estimates or were they in the nature of guesses?

A. They were very definitely guesses.

Q. In other words, so that the record will be clear, [140] you and Mr. Ferer went over the property and more or less guessed what you might be able to salvage from this, that or the other item that you understood you were purchasing from Richfield Oil Corporation, isn't that correct?

(Deposition of T. H. Clements.)

Mr. Paradise: I object to the question as calling for a guess made by Mr. Ferer and calling for the conclusion of the witness.

A. Yes.

Q. By Mr. Krasne: So that the record will also be clear, let's see if we can trace chronologically the order of events that led up to the execution of the written contract dated January 17, 1941. If I understood your testimony in response to Mr. Paradise's questions, you had on one or more occasions considerably before the contract was signed asked the salvage department of Richfield Oil Corporation when they expected to dismantle the Casmalia field, is that right? A. Correct.

Q. And Mr. McGahan and I believe you also said Mr. Davis told you when you made those inquiries in the early stages that they had received no instructions as yet to have the field salvaged, is that right?

A. That is correct.

Q. Then, some time in the latter part of 1940, Mr. Davis told you to get in touch with Mr. McGahan; that he felt that the company was now ready to dispose of the [141] equipment on the property; is that right?

A. That is correct.

Q. And you went over to see Mr. McGahan in his Long Beach office? A. Yes.

Q. And they asked Mr. McGahan if he had an inventory of what they wanted to sell? A. Yes.

Q. And Mr. McGahan told you that he had no inventory, that there was no inventory, of the equipment on that property in existence, is that right?

(Deposition of T. H. Clements.)

A. That is right.

Q. Did he tell you whether or not the company desired to sell everything on the property or just part of the equipment on the property?

A. He said that they only wanted to sell part of the material on the property and he showed me the excluded list of items.

Q. Were the items on the list which he showed you substantially the same items as were set up in the written contract as excluded items?

A. That is correct.

Q. Except for that, did he tell you that the company would entertain an offer for everything else on the property?

A. Yes.

Q. It was after that time early in December, 1940, [142] that you tried to interest Mr. Ferer in making a bid for the equipment there, is that right?

A. Yes; following that conversation with Mr. McGahan.

Q. And you took Mr. Ferer out to the property for the first time early in December, 1940?

A. That is correct.

Q. And, after spending the better part of a day there with Mr. Ferer, Mr. Ferer agreed to submit an offer to the Richfield Oil Corporation, did he?

A. That is correct.

Mr. Paradise: Mr. Krasne, could we have more testimony by the witness rather than by yourself?

Mr. Krasne: I am trying to clarify much of the generality of the previous examination. I don't think I am

(Deposition of T. H. Clements.)

putting any words in the witness's mouth and I think I am only crystallizing the record as to things he has already testified to.

Q. Do you know whether or not Aaron Ferer & Sons did make an offer to Richfield Oil Corporation?

A. They did. I was present and helped draw up the letter.

Q. When would you say that was approximately?

A. Well, somewhere in the early part of December; I would say between the 1st and the 15th, although I don't remember the exact date.

Q. And that was in the form of a letter sent to [143] Richfield Oil Corporation?

A. Yes; attention of Mr. Davis if I remember or it might have been attention of Mr. McGahan but I think it went to Mr. Davis.

Q. Then, what was the next thing that happened, if you know?

A. Nothing happened until Mr. Davis called me up and told us that our bid had been accepted.

Q. When was that?

A. Just after January 1st. I think it was the 2nd or 3rd. It was in the very early part of January.

Q. January, what year? A. 1941.

Q. What was the next thing that happened, if you remember?

A. I think that Mr. Davis, as I remember, wrote a letter to Aaron Ferer confirming the telephone conversation, saying the proposal had been accepted, and would

(Deposition of T. H. Clements.)

Aaron Ferer & Sons put up a check, I think, in the amount of \$10,000 prior to a certain date about a week hence. In other words, between the 8th and the 10th day of January that check was supposed to be in.

Q. Do you know whether or not Aaron Ferer & Sons did give Richfield Oil Corporation a check some time early in January, 1941?

A. Yes, Mr. Morris Ferer prepared such a check, which [144] I believe was a cashier's check, and, as I recall, I was with him when we came up and gave it to Mr. Harold Davis.

Q. In your earlier testimony I believe you said that on one occasion, in your presence and while you were in Mr. Davis's office, he called Mr. Paradise to see if he could arrange a meeting for the purpose of drawing a contract, and that Mr. Paradise was very busy or not available. Was that your testimony?

A. I believe it was.

Q. You believe that was your testimony?

A. Yes. I believe that Mr. Paradise was busy at the time. I don't remember him coming down but he may have.

Q. Would you say that the occasion when that telephone call was made was the day when you came up with Mr. Ferer and Mr. Ferer gave the check to Richfield Oil Corporation?

A. Yes.

Q. About January 8, 1941?

A. Yes; about that time.

Q. Then the next step that occurred was when you had the meeting in Mr. Paradise's office and he had a contract prepared, is that correct?

(Deposition of T. H. Clements.)

A. Well, no. At this previous meeting that you just mentioned, when Mr. Ferer gave the check over, as I recall, Mr. Davis said, "Well, we will note down our understanding of what is to go for this consideration", and I believe that [145] he turned around to the typewriter and at that time knocked off a memorandum and gave it to Mr. Ferer, outlining what was to be included in the contract which Mr. Paradise was to draw.

Q. I show you what purports to be a typed memorandum bearing the heading, "Sale of Material and Equipment at Casmalia", and appearing to have the initials in the lower left-hand corner of the dictator, "H. E. D." and of the stenographer "ad", and ask you if that is the memorandum which Mr. Davis handed you on that occasion. For the purpose of further identification, let me say that this memorandum bears the date January 8, 1941 in the lower left-hand corner.

A. Yes; that is right.

Mr. Krasne: I will ask the reporter, please, if he will be good enough to mark this document for identification for future reference in this matter as Plaintiff's Exhibit 1.

Q. At the time that Mr. Davis handed this paper to yourself or Mr. Ferer in your presence, as the case may have been, did you notice in it this clause, "Everything will be sold to the above with the exception of the following"? Did you see that clause? A. Yes.

Q. And at the time this memorandum was handed to you, was it your understanding that the deal between Aaron Ferer & Sons and Richfield Oil Corporation was that Aaron Ferer [146] & Sons were buying everything

(Deposition of T. H. Clements.)

on the property by way of production or refinery equipment or facilities except the items specifically excluded on this memorandum? A. Yes.

Q. Did I understand you to say that Mr. Davis told you and Mr. Ferer at the time he handed you this memorandum that the terms thereof were to be the basis of the contract which Mr. Paradise was to draw up?

A. Yes.

Q. And then you had this meeting in Mr. Paradise's office somewhere, I think you said, around the middle of January and just before the contract was actually signed?

A. I believe it was around the 15th or 14th or something like that.

Q. And that was the occasion, was it, when Mr. Paradise distributed a copy of the proposed contract to each person present? A. Yes.

Q. And it was on this occasion, was it, that Mr. Ferer stated that it was his understanding that the contract was to have included everything and that one of the provisions which Mr. Paradise had included in the contract might appear to be ambiguous and that he wanted the contract to say "all metal and all lumber" so that he would know that everything was included?

A. Yes, sir. [147]

Q. And Mr. Davis and Mr. Paradise said that they would be agreeable to the making of that change at that meeting, is that right? A. Yes, sir.

Q. And the next thing that happened that you know of was that contracts were mailed to Aaron Ferer & Sons for signature and that the contracts included the change which Mr. Ferer had asked for, is that right?

(Deposition of T. H. Clements.)

A. Yes, sir.

Q. And, as far as you know, the contracts were signed and that was it? A. Yes, sir.

Q. You said in response to one of Mr. Paradise's questions that you had never made any inquiry from any of the Richfield representatives as to how many wells were located on the property or how much casing there was in the wells, is that correct?

A. That is correct.

Q. Did you make any inquiry of any of the Richfield Oil Company representatives as to how much of any other item of producing or refining equipment there was on the property? A. No.

Q. In other words, you and Mr. Ferer went out to the property to figure for yourselves what in your best judgment could be salvaged from the equipment, how much it would cost to salvage it and what the potential profits or losses would be, is that right? [148]

A. Yes, sir.

Mr. Krasne: That is all.

Redirect Examination.

Q. By Mr. Paradise: I don't recall, Mr. Clements, whether I asked you if you ever inquired of the Division of Oil and Gas at any time prior to the date of the contract what the Division's requirements would be with respect to your proposed abandonment of those wells on the Richfield property. A. I never so inquired.

Q. You never so inquired? A. No.

Mr. Paradise: That is all.

(Deposition of T. H. Clements.)

Recross-Examination.

Q. By Mr. Krasne: For the purpose of the type of estimate that you and Mr. Ferer were making and to arrive at a figure that Mr. Ferer would be willing to offer, did you feel that you knew enough about the abandonment of oil wells to make a near enough estimate for yourself as to what the cost of abandonment would be?

A. Yes.

Q. Did you feel at that time that your experience in the oil business was sufficient for you to hazard a pretty fair guess as to what would be required by way of abandonment [149] of the wells? A. Yes.

Mr. Paradise: I submit those questions are all very leading and suggestive. I would much prefer to have the testimony of the witness.

Mr. Krasne: I will say for the purpose of the record that counsel's point would be well taken except in this type of action, where counsel by his pleadings has raised the question of the plaintiff's intentions and their frame of mind and their suspicions as to the defendant's intentions, it makes it necessary to inquire into what this plaintiff actually did have in mind.

Mr. Paradise: But it is still preferable to have the witness's testimony as to what his intentions were.

Mr. Krasne: That is all.

Mr. Paradise: Before we conclude this deposition, when will Mr. Clements be available for the purpose of reading over and signing his deposition in order that it may be filed in court as soon as possible for the purpose of the hearing on the motion for a summary judgment?

(Deposition of T. H. Clements.)

Mr. Krasne: I will have it read immediately and, assuming that it will be correct, I will have it signed almost immediately upon receipt of it from the notary.

Mr. Paradise: May it be stipulated, then, Mr. Krasne, that, after the witness has read the same, that any corrections he wishes to make will be made in the presence of Mr. [150] Reynolds, the notary, and there signed and verified?

Mr. Krasne: Yes. In other words, we stipulate, if there are no corrections, it may be signed before any notary, is that right?

Mr. Paradise: That is satisfactory.

Mr. Krasne: And only if corrections are made is it to be signed in the presence of Mr. Reynolds?

Mr. Paradise: If corrections are to be made, those changes are to be made in the presence of Mr. Reynolds and then signed and verified.

T. H. CLEMENTS.

Subscribed and sworn to before me this 12th day of February, 1942.

ROSS REYNOLDS,

Notary Public in and for the
County of Los Angeles, State of
California.

(By agreement between counsel for the respective parties, an adjournment was taken at the hour of 4:50 p. m. to the hour of 10:30 a. m. on Saturday, February 7, 1942, at the same place.) [151]

(Met pursuant to adjournment on Saturday, February 7, 1942, at the hour of 10:30 a. m., at the same place, with the same parties present as last before mentioned.)

MORRIS FERER,

a witness called by the defendant, being first duly sworn,
testified as follows:

Direct Examination.

Q. By Mr. Paradise: What is your business address, Mr. Ferer?

A. 5585 East Sixty-first Street, Los Angeles.

Q. And the business is operated under the name of Aaron Ferer & Sons, is that correct?

A. That is correct.

Q. What is your status in connection with that business?

A. I am a member of the copartnership and general manager.

Q. You have charge of the operation of the business and the determination of its business problems?

A. I do.

Q. And the other copartners I think are stated in the complaint as Esther Peggy Ferer and Robert Irving Ferer?

A. That is correct.

Q. What is the nature of that business?

A. We do a scrap metal business and usable machinery [152] and equipment and so forth.

Q. Do you buy equipment solely for the purpose of resale in the ordinary course of business?

A. Yes; we do.

Q. Do you have a warehouse? A. Yes.

Mr. Paradise: The statement that I made yesterday concerning the stipulation between Mr. Krasne and my-

(Deposition of Morris Ferer.)

self with respect to the production of documents under the order of the court is the same with respect to Mr. Ferer as with respect to Mr. Clements, is it not?

Mr. Krasne: So stipulated.

Q. By Mr. Paradise: Have you seen, Mr. Ferer, the list of documents specified in the order of Judge Hollzer, dated February 4, 1942, which you were required to bring to this deposition?

A. My attorney told me what documents he wanted and he has all the documents that we have pertaining to this transaction.

Q. He has all documents?

A. He has whatever documents there were.

Q. The first item of the court order is all written memoranda, records, tabulations, estimates and correspondence, prepared during the years 1940 and '41, by Morris Ferer, T. H. Clements, Aaron Ferer & Sons, or by any of their employees or agents, pertaining to the purchase by [153] Aaron Ferer & Sons of facilities and equipment from Richfield Oil Corporation, or pertaining to the facilities and equipment to be purchased by Aaron Ferer & Sons from Richfield Oil Corporation. Have you brought to this deposition any documents or memoranda or any of the other items that are referred to in that order?

A. There were none.

Q. There were none? A. No, sir.

Q. Have you given to Mr. Krasne any of such items?

A. No.

Q. There were no such documents or items contained in the documents which you furnished to Mr. Krasne, is that correct?

A. That is correct.

(Deposition of Morris Ferer.)

Mr. Krasne: So the record will be clear, I presume Mr. Paradise is directing attention to any records or memoranda between Mr. Clements and the company or anyone connected with the company and not to any correspondence between Richfield and Aaron Ferer & Sons.

Mr. Paradise: That is correct.

A. That is correct; there were none.

Q. In other words, my question is directed to any and all memoranda, records, tabulations, estimates and correspondence, other than correspondence directly between Aaron Ferer & Sons and Richfield. [154]

A. That is correct.

Q. Do I understand, then, Mr. Ferer, that, at and prior to the time this contract was signed which is dated January 17, 1941, there were no memoranda or records or tabulations or estimates of any of the equipment or facilities which you expected to purchase under this contract? A. No; there were none.

Q. Were there any made at the time which have since been destroyed? A. No, sir.

Q. Your estimates were made solely on the basis of calculation in your mind rather than by the preparation of any tabulations or calculations on paper?

A. Well, mostly that way. We might have made scribbled figures on scratch paper which we didn't retain at the time. I went over the plant and we might have picked up a piece of scratch paper. The reason for that was that this particular job, if you want me to explain it—

Q. Yes; you are entitled to explain.

(Deposition of Morris Ferer.)

A. The reason for that was this particular job was such a hit and miss job that we couldn't seem to get much information from Richfield. We had to do so much guessing and so much of it was underground and it was an unknown quantity both as to labor and as to the tonnage of material that would be there. It was all strictly a question of guess. [155]

Q. You say that you were unable to obtain sufficient information from Richfield. What inquiries did you make of Richfield for information which you were unable to get?

A. At one time I spoke to Mr. McGahan, who I presume had charge of your salvage department, and asked him if there was any information regarding this particular job and he said no, that—I don't remember the exact words but he said that they didn't have any inventory and that they couldn't give us information; that we were to look at it ourselves.

Q. When did that conversation take place?

A. Well, some time prior to our making out a bid. I don't remember the exact date but in and around that time.

Q. Within a few weeks of that time?

A. No; it wouldn't be a few weeks. It would probably be a few days.

Q. Where did that conversation take place?

A. I think at Long Beach, at your office out there.

Q. At the Richfield office in Long Beach?

A. Yes. Or it might have taken place in a phone conversation. I am not definite about that.

(Deposition of Morris Ferer.)

Q. What was your request to Mr. McGahan? Was it merely for an inventory?

A. For an inventory and if he could enlighten me any on what might be out there.

Q. What was Mr. McGahan's answer? Was it simply that [156] he had no inventory?

A. That he had no inventory and that they couldn't give us any information on it and that it was up to us to look at it and buy what we were buying or words to that effect. That isn't the exacting wording of this but that is the trend of thought.

Q. Did he refuse to give you any information?

A. No; it wasn't a question of refusal. It was just a matter of conversation. And whether he had instructions or whether that was his own opinion, I don't know. That was the general conversation.

Q. Wasn't his answer simply that there was no current inventory that had been prepared, with the items of facilities and equipment that were up there?

A. Well, that might have been his answer but I also asked him if he could give some idea of what he thought and he said he couldn't.

Q. Did you ask Mr. McGahan what the tonnage of the facilities and equipment which were to be sold consisted of?

A. I don't remember. I might and I might not have. But, in any event, he didn't give me any information.

Q. That is what you were interested in primarily, was it not, was the tonnage?

(Deposition of Morris Ferer.)

A. Well, that was what I was interested in and any other information that I could get.

Q. But you didn't ask him specifically as to what his [157] estimate of the tonnage was, is that correct?

A. I don't think so.

Q. Did you ask him for anything other than an inventory?

A. Only what other information he could give me.

Q. What types of information did you ask for?

A. Well, just general. I wanted to be enlightened as much as I could and I didn't get any information.

Q. Did Mr. McGahan refuse to answer any of your questions?

A. Oh, no; it wasn't a question of refusal because, if he had—it was merely that I felt that he wasn't familiar with it or didn't know about it or whatever that might be and that it was up to us to go and formulate our own conclusions.

Q. Did you ask him any questions as to the condition of the equipment? A. No.

Q. Did you ask him as to the tonnage?

A. I might have asked him that. I don't know. It would be a logical question to ask him.

Q. Do you recall whether he stated what the tonnage was?

A. No; I can tell you definitely he didn't.

Q. Did he state he didn't know what the tonnage was?

A. That is right. He stated that he didn't know and that he didn't have any information on it. I think he

(Deposition of Morris Ferer.)

[158] stated that their records were not clear or up to date. And again, as I stated before, he said it was up to us to go out there and check it ourselves.

Q. Did you ask at that conversation for any other specific information? A. I don't think so.

Q. If Mr. McGahan was unable to supply you with the information that you wanted, did you make a request to any other Richfield representative or employee, either at that time or any other time, for the information that you desired? A. No, sir.

Q. Returning to the order of the court, the second item describing the documents to be brought to this deposition is as follows: All written memoranda, records, tabulations, estimates and correspondence, prepared during the years 1940 and 1941, by Morris Ferer, T. H. Clements and Aaron Ferer & Sons, or by any of their employees or agents, and used by them in estimating the price of \$22,000 offered to Richfield Oil Corporation by Aaron Ferer & Sons as the purchase price for such *facilities* and equipment. Have you brought to this deposition any documents as required under that provision of the order? A. There were none.

Q. There were none? A. No, sir.

Q. There were none prepared? [159]

A. There were none prepared.

Q. In other words, I take it that the documents that you have referred to, that you have given to Mr. Krasne, therefore, do not include any documents of this nature?

A. That is correct.

(Deposition of Morris Ferer.)

Q. The third item of the order of court is copies of all logs and histories and drillers' reports or records of or pertaining to any of the wells located upon the land of Richfield Oil Corporation described in the contract, dated January 17, 1941, attached to the amended complaint herein. You listened to the deposition of Mr. Clements and I presume you heard his answers with respect to those logs and histories? A. Yes.

Q. Are all of the logs and histories and drillers' reports and records pertaining to those wells in Mr. Clements' possession? A. As far as I know, they are.

Q. Do you have any of them? A. No, sir.

Q. So neither you nor Aaron Ferer & Sons have any documents of the nature that were requested under that paragraph of the order, is that correct?

A. That is correct.

Q. When did you first learn, Mr. Ferer, of the fact that Richfield proposed to sell certain equipment and [160] facilities from its Casmalia property?

A. The latter part of November or the very early part of December. I don't remember the exact date.

Q. Did you receive that information from some Richfield employee or representative? A. No, sir.

Q. From whom did you receive it?

A. Mr. Clements.

Q. Were you at that time familiar with the Casmalia property? A. No, sir.

Q. You had never seen the same? A. No, sir.

(Deposition of Morris Ferer.)

Q. Did you discuss its purchase from Richfield with any Richfield representative or employee prior to the time when you and Mr. Clements visited the property?

A. No, sir.

Q. What was the date of that visit?

A. Outside of that question of the conversation with Mr. McGahan, which I don't remember was either right before or after I was up to the property the first time, that is, I don't remember whether it was before or after I was up at the property for the first time.

Q. Can you fix the date of your first visit to the Casmalia property, the Richfield property, with Mr. Clements?

A. Not the exact date but it was the early part [162] of December, 1940.

Q. Was that shortly after the time when Mr. Clements first told you of this contemplated purchase?

A. Yes, sir.

Q. Did you make any arrangement with Mr. Clements at or about that same time with respect to Mr. Clements' interest in this transaction?

A. Well, in that period of our negotiations we made the arrangements. But I again can't fix the exact time but we had numerous conversations and the arrangements were made during those negotiations.

Q. Did you make a written agreement with Mr. Clements concerning that?

A. No, sir.

Q. What was the nature of the oral agreement?

(Deposition of Morris Ferer.)

A. He was to get $33\frac{1}{3}$ per cent of the net profits and he was supposed to stand $33\frac{1}{3}$ per cent of any of the losses.

Q. Was he to furnish any of the labor or equipment or services that were necessary to perform Aaron Ferer's obligations under its purchase arrangement with Richfield?

A. No, sir. He may have furnished some small amount of equipment but it was our understanding that we were to do all of the furnishing of the equipment and funds and everything else that was necessary. His duty was to supervise and take charge and handle the job or have one of his key [162] men handle the job. That was about all his duties were and, of course, make sales, being that he was also in that end of the business, that is, makes sales of some of the material.

Q. Did your agreement contemplate that he should have the right to make sales of the salvaged equipment or that the sales should solely be made by you or were the sales to be made by both of you jointly?

A. Our agreement was that the sales could be made jointly but that, if there was any important sale that ran into any amount of money, he would consult with me before he actually closed the deal. But on small sales or numerous sales I felt enough confidence in his ability to let him go ahead. All of the material was billed through our company and always handled through our company. He merely acted as our agent, you might say.

Q. Do I understand, then, that Mr. Clements merely negotiated or that you contemplated that Mr. Clements would merely negotiate sales of the equipment which you

(Deposition of Morris Ferer.)

were going to salvage but that the actual sale would be made by Aaron Ferer & Sons to the prospective purchaser?

A. Well, not necessarily. He would make the sale and ship the material out.

Q. Under your name? A. Under our name.

Q. That examination of the property which you made with Mr. Clements you say occurred some time during December of 1940? A. Yes; the early part.

Q. Was there anyone else present at that examination besides your and Mr. Clements?

A. No; not outside of your man Duncan walking over to what they called the refinery portion of the property and showing us certain items that were excepted and also showing us in his home the map; that is all. We went over the property ourselves, Mr. Clements and I.

Q. Mr. Duncan was the only Richfield man on the property, was he not?

A. As far as I know. He is the only one I remember seeing.

Q. Do you know his status?

A. Well, no. As I understand, he was formerly a superintendent or something and acted as a watchman or something. I don't know. We didn't go into detail about that. He was only with us a very short while.

Q. The property was not then being operated by Richfield as a refinery or for any other purpose, is that correct?

(Deposition of Morris Ferer.)

A. As far as my limited knowledge would go, I would say no.

Q. You say Mr. Duncan took you over to the refinery end of the property and pointed out certain items which were to be excluded?

A. That is correct. [164]

Q. What items did he point out?

A. Well, he pointed out some stills and some sheets and that is about all I can remember, stills and sheets.

Q. When you say sheets, will you describe those?

A. There were some sheets laying around. They looked like they had been stills or something that had been cut open or ripped up and the rivets taken out and they were pretty heavy sheets. I didn't pay any particular attention to them, although I glanced at them. As long as we knew we were not to get them, I just paid no attention to them. And I think he showed us some pipe out of a heater or something that he also told us a certain portion of went but that they had sold it, I think, to O. C. Fields, and that they had taken some of it and they were to get a certain amount more. He was a little indefinite as to the exact amount. And that was about all.

Q. As to the exact amount of what?

A. The number of pipes or pipe that this company was to get out of this particular coil. There was a big coil of pipe there out of a condenser or something. Apparently your company had sold some of those to this O. C. Fields Company.

(Deposition of Morris Ferer.)

Q. The matter that he was indefinite about was as to the quantity that had been sold to the Casnite Company or the O. C. Fields Company?

A. Yes; that is correct. [165]

Q. Did Mr. Duncan point out to you the gas lines running to certain wells which were to be excluded?

A. He did not.

Q. He did not? A. No, sir.

Q. Did he point out any other items which were to be excluded?

A. Well, he couldn't have any items of importance or I think I would have remembered them and I don't remember any.

Q. Did either you or Mr. Clements ask Mr. Duncan for a map of the property?

A. Yes; we did. When we first came onto the property, we went up to his house and he showed us a map there of the property.

Q. Did you know that Richfield had three separate parcels of land up there? A. No, sir.

Q. Did you ask him for a map as to any particular parcel? A. No, sir.

Q. Did he know what particular parcel you were interested in?

A. That I can't answer. He apparently knew they were going to sell all this material up there and I presume that he showed us the map pertaining to that. I don't know.

(Deposition of Morris Ferer.)

Q. What were your conversations with Mr. Duncan concerning the map? [166]

A. Well, merely that we were up there to look over the property with the thought of purchasing it and that we understood he had a map. And he said, "That is correct." And it was a great big map with a lot of lines on it and a lot of markings on it. I am not an expert reader of maps, I can't tell you right now. And we looked it over and got sort of a bearing and then went out to look over the property.

Q. How much of the time that you spent up there did Mr. Duncan spend with you?

A. Oh, I would say possibly a half hour or something like that.

Q. And how much longer did you stay?

A. We stayed there practically the whole day.

Q. Will you describe what examination you made of the property, you and Mr. Clements?

A. Well, we went over to the refinery. And I have my own way of appraising things. While I never appraised a refinery before, I made mental notes and figures and wrote down figures to get the approximate tonnage and gathered what I could with what information Clements gave me, and we covered the entire property not in minute detail because it was very hard to do that. As I say, he would say, "Here is a pipe line running from here over here and here is an oil well here." And, of course, I couldn't see a thing because it was underneath the ground.

(Deposition of Morris Ferer.)

Q. What was underneath the ground? [167]

A. I presume the pipe lines is what he talked about and the wells.

Q. The pipe lines were exposed on the surface for a good portion of their surface, were they not?

A. Some were exposed but the major proportion of the material was underground.

Q. When you say the material, you mean the pipe lines, is that correct?

A. I mean the pipe lines; yes, sir.

Q. They were in trenches, were they not, that is, the pipe lines?

A. No, sir. They were under the ground, covered completely. There may have been some in trenches but, as I say, the greatest portion of them were covered completely under the ground.

Q. When you say covered completely, you mean that portion of the lines which were underground but a portion of the lines were exposed on the surface, were they not?

A. Oh, sure; there would be lines coming up out of the ground, where we could see that they went into the ground. They were crisscrossed all over the property.

Q. With respect to the refinery equipment, Mr. Ferer, how did you go about estimating the tonnage of the facilities which you expected to remove?

A. Well, I would look at a condenser and I would figure out that there was 25 tons there and 25 tons [168]

(Deposition of Morris Ferer.)

here and so many tons there and gathered a lump figure and then went on in the same way all through the rest of the examination. We examined the boilers and we looked at the boiler houses and took into consideration it was quite a job removing them. There was a lot of brick and a lot of debris and there were some houses that some of these boilers were in. And, when we got through, we had a rough idea of what we thought would be there but we realized that this job was so indefinite, due to the fact that so much of this material was concealed or underground, that we just had to guess. It didn't mean a thing. Our figures didn't really mean a thing.

Q. When you say so much of this material was underground, what material are you talking about?

A. I am talking about the pipe, the pipe lines, the wells and the lines that were in the other pipe lines. We could see or I could see at the end of a line that would go into the ground that there was pipe inside of pipe. That is what I have reference to.

Q. What estimate did you make at that time of the tonnage of the refinery facilities?

A. I couldn't honestly answer that question because, as I tell you, we lumped the whole thing at that time and I didn't make any particular breakdown. I made a breakdown at the time I was appraising it to gather my lump sum or to gather my lump figure but, as I tell you, it was so indefinite that I realized that it was just [169] foolishness to even try to appraise any sensible tonnage be-

(Deposition of Morris Ferer.)

cause it was a job that was unusual, and it was just a matter of taking a chance on buying this material and hoping that what we thought was there would be there.

Q. How long have you been in this business, Mr. Ferer, of salvaging equipment and removing it and reselling it? A. Oh, 25 years or more.

Q. And during the course of that time you have made appraisals of various jobs, I presume?

A. Oh, lots of jobs but never one like this.

Q. Wherein does this one differ from the others?

A. Because on other jobs the material is in front of you and you can either get figures on the machinery or whatever may be there or you can estimate it. You may be off on your estimation either in your favor or against yourself but at least you get an idea.

Q. It is important to you, then, to know within reasonable limits the estimated tonnage which you expect to take out, is that correct?

A. Oh, yes; it is important. But, as I say, in making these deals there is nothing sure fire about them. We take a chance sometimes; lots of times. The question of labor was indefinite on this and the question of hauling was indefinite on this. The whole job was of an indefinite quantity.

Q. What information would you have needed to [170] make a more exact determination of the tonnage which you expected to take off?

(Deposition of Morris Ferer.)

A. The only information, if I felt that Richfield would keep an up to date set of books, was an inventory of all their plants so they could say to me, "We have so much," and that a company like Richfield wouldn't misrepresent—

Q. I don't understand your answer to that. Does your answer imply that Richfield did misrepresent?

A. No. You didn't let me finish.

Q. I am sorry. Go ahead.

A. Will you please read the question to me?

(Question read by reporter.)

A. And, if they had that information, I would have been guided a great deal by that.

Q. When you discussed with Mr. McGahan the question of the inventory, which discussion I understood you to say you don't recall whether it was before or after your inspection of the property,—

A. No, sir.

Q. —what type of an inventory did you ask him for?

A. I don't think I asked him for any type of inventory. I wouldn't know. I asked him if they knew what they had up there and if they could enlighten me to help us out. And I figured, if they had it in detailed form as a good many large companies such as yours would have, we could figure it. In most cases they have each piece of equipment and each [171] item itemized so we can check against that and they have weights and they have the number of miles of pipe lines and the number of feet in the ground and in the pipe, and all of those things would help out and we could check in an

(Deposition of Morris Ferer.)

easier manner in that way. But, as I stated, his answer was that it was up to us to look it over ourselves; that they didn't have any information on it.

Q. Did he tell you at that time that the property had not been in operation for a period of something over 15 years and that was the reason he had no inventory?

A. No; he didn't give me any explanation.

Q. You have mentioned two items which you said were unknown quantities, that is to say, unknown from the standpoint of the tonnage involved. One was the pipe lines and the second was the casing in the wells, is that correct?

A. The tonnage or footage of the pipe lines and the pipe or casing in the wells was unknown.

Q. That was completely unknown to you, is that correct?

A. It was completely unknown to me except that I took it for granted that Mr. Clements knew his business.

Mr. Paradise: I move to strike that portion of the answer as to what Mr. Ferer took for granted.

Mr. Krasne: Subject to counsel's motion, you may, nevertheless, give your answer for the purpose of the record, Mr. Ferer.

A. Mr. Clements told me that the wells should [172] produce a minimum of 50,000 feet, with a good possibility of their having 100,000 feet; and I, of course, took that into consideration in my figures.

Mr. Paradise: I move to strike the witness' answer as to his conversation with Mr. Clements as being hearsay in so far as the defendant is concerned.

(Deposition of Morris Ferer.)

Q. Did you ever inquire of Mr. McGahan as to the length of the pipe lines or the approximate length of the pipe lines that were on the property?

A. No, sir; I made no inquiries other than what I have already mentioned. And I can also tell you flatly now that I had no conversations and no contact and no talks with any one of the Richfield Company in any way, shape or manner, outside of the conversations that I have already mentioned with Mr. Duncan and Mr. McGahan, up until the time of the closing of the deal with Mr. Davis.

Q. Have you any way of refreshing your recollection as to whether the conversation with Mr. McGahan that you mentioned, in the Richfield Long Beach office, occurred before or after your examination of the property?

A. Let me correct you. As I stated before, I am not sure that the conversation occurred at Mr. McGahan's office in Long Beach or whether it was over the telephone. I am not clear on that.

Q. Had you ever met Mr. McGahan before?

A. I think so. I think I met him there on some [173] other salvage that we had purchased or were going to purchase, that came out of your store yards or whatever you call them.

Mr. Paradise: I asked a question which I think you failed to answer. Will you read it, Mr. Reporter?

(Question read by notary.)

A. No, sir.

Q. At that time did you ask Mr. McGahan as to the extent of the pipe lines?

(Deposition of Morris Ferer.)

A. I don't think that I narrowed it down to that. I have repeated to you the total of the conversation as I remember it to date.

Q. Then, I take it you also failed to inquire of Mr. McGahan about the size and weight of the various pipe lines, including the steam lines that were used in connection with those lines?

A. Well, when he told me that he had no information, there was no need of my trying to quiz him. I didn't want to antagonize him or anything else. I don't remember asking him anything outside of the conversation that I have already repeated to you.

Q. Did Mr. McGahan say he had no information of any nature about the equipment?

A. I wouldn't say it in those words. I don't remember the exact words. I know Mr. McGahan's answer to me was negative and that is about all I can tell you.

Q. Did you inquire of Mr. McGahan as to the sizes and [174] weights and quantities of casing in the wells?

A. No, sir.

Q. Was there any discussion with Mr. McGahan at all about the wells? A. No, sir.

Q. Were either the wells or the casing mentioned in that discussion? A. No, sir.

Q. When you failed to get that information from Mr. McGahan, that is to say, the information that you asked him for, did you make any inquiry of any other representative or employee of the Richfield Oil Corporation about it?

(Deposition of Morris Ferer.)

A. No. As I stated before, I can clear that up for you now that I never had, and I will repeat it again, any conversations with any Richfield employees in any way, shape or manner, outside of the conversation with Mr. McGahan and the one the short time I met Mr. Duncan.

Mr. Krasne: So the record will be straight, do you mean prior to your making the deal with Mr. Davis, as you testified before?

A. Yes; prior to making my deal with Mr. Davis.

Q. By Mr. Paradise: And what was the date of your conversation with Mr. Davis that you just mentioned? A. I think it was on January 8th.

Q. Of 1941? A. Of 1941. [175]

Q. At the time you and Mr. Clements were inspecting the property, what estimate of tonnage did you fix for the pipe lines?

A. Well, as I told you, the pipe lines in the wells we estimated, that is, Clements estimated because I am not well enough versed to make an estimation of wells, at 50,000 to 100,000 feet and the rest of the material there, as I told you, we lumped, that is, I in my own mind and with the limited information that I had made my own estimation of the total of everything.

Q. I don't understand your answer, Mr. Ferer. There is no such thing as pipe line in the wells, is there?

A. Well, I don't know. I would call it pipe line. It is pipe down there and it is a line. That is what I would figure it, as pipe line in the well, but I am not an expert on wells. If you ask me any questions about wells, I won't be able to give you much information.

(Deposition of Morris Ferer.)

Q. Are you acquainted with oil field operations?

A. No, sir.

Q. You never have been?

A. I never was before I got into this and my knowledge to date is very limited.

Q. Are you familiar with the fact that in the oil industry the phrase pipe lines is used solely in connection with the surface lines connecting wells to tanks and connecting tanks and that any steel that is installed in a well [176] and cemented in the well is referred to solely as casing?

A. I can't agree with you on that because in my line of business pipe and casing would be the same thing and we are in the habit of calling everything pipe.

Q. That is, after it has been removed from a well, when it is on your racks in your warehouse?

A. I can't answer that other than I would know it as pipe. I have heard it referred to as casing but it all serves the same purpose and we call it pipe.

Q. Your knowledge is limited to your operations of buying and selling of so-called steel pipe, when it is not installed or cemented in a well, is that correct?

A. That is correct.

Q. You say that the estimate that you made of the tonnage of the casing in the wells was from 50,000 to 100,000 feet?

A. I didn't say that I made that estimate.

Q. Was that the estimate you used as the result of what Mr. Clements told you?

(Deposition of Morris Ferer.)

A. I used that in my figures, yes, to arrive at an idea of what we were going to offer for the total of all the material on there.

Q. Will you describe what examination you made of the wells?

A. We went around and looked at the wells and we saw these stubs sticking out, and I remarked to Mr. Clements [177] that that was pretty heavy pipe, a large pipe, and he explained to me that that was merely the outside and that inside of this pipe were other lines of pipe or casing, if you want to call it that. And everything was cleaned away from there. There was nothing there except these stubs sticking out. And, of course, stacked around the property were pieces of heavy timber, rotted and cut up and so forth, that he told me came off of what they called the derricks. And that is how we got into the conversation about how much material would be in those wells and that is how Clements said to me that there should be at least 50,000 to 100,000 feet of pipe out of the wells alone.

Q. Did he state whether that was the quantity that could be recovered or that that was the quantity that was cemented in the wells?

A. No; he stated that was the recoverable quantity.

Q. How many wells did that include, that estimate?

A. I didn't go into that detail. We didn't have an opportunity to count them all but he told me that that was what the wells would yield.

Q. How could you arrive at an estimate as to the aggregate quantity without knowing how many wells there were or approximately how many wells there were?

(Deposition of Morris Ferer.)

A. As I just said, I took Mr. Clements' figures on it. I could count them from now until the cows came home and I wouldn't know what the difference was. I can tell something [178] that I can see and I can formulate my own opinion but on items like that, that I know nothing about, I took it for granted that that was a fact.

Q. Do you know anything about the abandonment of oil wells, Mr. Ferer?

A. Only what I have learned since I have gotten into this job.

Q. You didn't know anything about it at that time?

A. No; except that Clements casually remarked that certain work had to be done in abandoning a well. But I didn't go into detail and I didn't give much thought to it. I was more interested in what would come out of the wells in the way of pipe for my money, that is, for the money that I was going to invest.

Q. Did Mr. Clements tell you the manner in which a well must be abandoned?

A. No. We didn't have time for that. We had plenty of work to do to look over all this property.

Q. Did Mr. Clements tell you that you can't remove casing that is installed in an oil well without abandoning it in accordance with the requirements of the State laws on the subject?

A. As I stated before, he stated that there were some State laws that had to be complied with and certain things that had to be done, but I didn't go into detail.

(Deposition of Morris Ferer.)

Q. Did he tell you at that time that those requirements [179] were equally applicable to the owner of the property as well as to any contractor who wanted to abandon wells?

A. I don't remember him telling me that.

Q. Did Mr. Clements tell you anything about the items of cost that entered into the abandonment of an oil well?

A. Well, not in detail. He told me the cost—I don't remember the exact wording but he told me that the cost of abandoning a well was considerably less than the amount of salvage we would get out of it or I would have gone into detail otherwise. But as long as he put it that way and again told me that he felt sure that we would get at least 50,000 to 100,000 feet of salvagable material, that is all I was interested in because there was not only cost of the wells but there were terrible costs in taking out other pipe lines that were underground, and there are considerable costs in handling the whole job away from your base of operations. So that the fact that there was a cost in abandoning these wells didn't mean anything to me at the time any more than the cost of removing the other material. It was just a question of the whole job being that way.

Q. Did Mr. Clements inform you that there were certain of the wells on the property from which no recoverable casing could be obtained?

A. Not in detail. In fact at that time I don't think we went into it.

Q. Did he discuss any individual well and state what [180] could be recovered from that particular well?

(Deposition of Morris Ferer.)

A. No, sir.

Q. Did Mr. Clements state that on certain of the wells the cost of abandonment would be more than the value of any casing that you could recover from the wells?

A. Not at that time. We merely arrived at the figures that I gave you before, that we would salvage 50,000 to 100,000 feet, and I took that for granted and into consideration the same as I did the rest of the material.

Q. Did Mr. Clements tell you that, before you could determine the cost of abandoning a well, it would be necessary to rig up and enter the well and put a bailer in the well in order to determine whether you could clean the same out?

A. He didn't go into detail as to what had to be done at that time.

Q. Mr. Clements testified in his deposition yesterday that it was his understanding and intention that in connection with the abandoning of a well the well would be entered and, if it turned out to be unprofitable to abandon a well, the well would be left as it was. Did he discuss that with you?

A. He did not.

Q. Was that your intention?

A. Well, we consider ourselves a pretty reliable company and, if there was any bitter with the sweet, we [181] would have to take it and, if there was anything we had to do, that is what we would have done because that is the way we do business.

Q. Did you make any estimate of the tonnage in the pipe lines?

(Deposition of Morris Ferer.)

A. As I told you, I lumped it all together, Mr. Paradise.

Q. If you estimated that the quantity of recoverable casing in the wells was from 50,000 to 100,000 feet, what was the total estimate that you placed on the tonnage of both the pipe lines and the casing in the wells?

A. Somewhere in the neighborhood of from 3,000 to 6,000 tons.

Q. 3,000 to 6,000 tons?

A. The total of everything.

Q. Now you are including the refinery equipment as well as the other producing equipment, are you?

A. I am including everything on the property.

Q. What were the other items of producing equipment?

A. I don't know what you mean. If you want me to enumerate the items that I think were on there, I will be glad to do it.

Q. What were the ones that you examined?

A. We examined surfacely everything that was on there, boilers, pumps, valves, pipe, sheets, warehouses and so forth.

Q. Aside from the refinery equipment, there were various items of producing equipment, were there not, in the nature [182] of boilers, tanks and pipe lines?

A. Yes; sure.

Q. Those were all examined? A. Yes.

Q. Did you make any separate estimate of the ton-

(Deposition of Morris Ferer.)

nage of those producing facilities as distinguished from the tonnage of the refinery facilities? A. No, sir.

Q. The estimate you stated was between what limits?

A. 3,000 and 6,000 tons.

Q. Did you examine any loose equipment and metal that was lying around on the surface of the property, including both the refinery on the land and the producing end of the land?

A. When you say examined, there was a negligible amount of loose equipment. I don't know exactly what you mean by that. We didn't examine that any more than we did any of the rest of it. We laid no particular stress upon any particular thing up there. We just took it all the best we could.

Q. Did you see the scrap pile, that is to say, the pile of loose metal and wire lines and drilling bits and other equipment that was located on the property?

A. There were not many drilling bits, as long as you are enumerating them. In fact I don't remember seeing any drilling bits. There was a small amount of loose scrap iron [183] and there was a pile of rusty cable which at the time I made a mental note would be a headache. We didn't know, of course, when we examined it what disposition would be made of it, whether we would have to take it or have to move it or what we would do or whether we would even purchase the material because we hadn't entered into any agreement. But most of the material that was loose was cable and cable at that time was a liability. It was rusty and it was all twisted.

Q. Can you sell that by the ton as scrap iron?

(Deposition of Morris Ferer.)

A. You can sell it by the ton but the cost of handling it and preparing it for scrap metal is equivalent to the value that you can get out of it. The condition of this particular cable, which apparently had been laying there for an extremely long time, was it was very rusty and very twisted up. Cable to be sold as scrap must first be put through a fire to burn the rope core in the center, if there are any rope cores, and it must be cut to lengths of 12 inches. And this cable, or the great proportion of it, I would say the largest proportion of it, was so rusty that, if you tried to burn it or cut it, it crumbled. It was oxidized.

Q. That same rust condition prevailed over the tanks and boilers that you examined, did it not?

A. No, sir.

Q. Mr. Clements testified yesterday, Mr. Ferer, that in examining the wells, that is to say, the portion of the [184] wells which could be seen after the derricks were taken down, there was a stub of casing that appeared at the top, sticking out from the surface, which was capped, and that there was gas and oil escaping. Did you see the same thing?

A. Well, I saw some oil around some of the wells but I wasn't experienced enough to say whether it was seepage or not. And then, as we came on the property, I smelled gas and I said, "What in the devil is that?" And he says, "Well, that is gas escaping from wells", or something like that. But I didn't pay any attention to it. I wouldn't know enough about it and we had so much work to do that day that I didn't make any mental note or have any real remembrance about it outside of the fact that I did see some oil around some of the wells.

(Deposition of Morris Ferer.)

Q. What was your over-all estimate of the cost of performing the salvage work and cleaning up of the property?

A. Are you including the wells in that?

Q. Whatever estimate you made of your costs.

A. If I remember correctly, without the wells, we figured our cost for just removing the material would be approximately \$5 to \$7 a ton. As I said before, it was just hit and miss to even try to guess at the cost of removing that material because so much of it was concealed.

Q. When you say removing, does that mean transportation or what?

A. That means getting it prepared and ready to either [185] load on trucks or on cars. It doesn't include any transportation.

Q. It doesn't include the cost of dismantling the various buildings and cleaning up the surface of the property, which work is required to be done under the contract?

A. No, sir.

Q. What were your costs or what was your estimate of those costs?

A. I made no estimates. I just hoped that it would be low. We couldn't tell because we didn't know how it would jibe out. We didn't know exactly what had to be done. But, naturally, we made, or I made, mental allowances in my mind for cost of clean-up and so forth, but I had no set figure on it.

(Short recess.)

A. May I have the last question and answer read?

(Question and answer read by notary.)

(Deposition of Morris Ferer.)

Q. That figure that you mentioned, Mr. Ferer, of \$6 to \$7 per ton, did not include transportation, then?

A. No; it did not include transportation.

Q. And it did not include the cost of performing any work on the property in the nature of cleaning up, other than merely the removal of the equipment from where it was located and putting it on trucks, is that correct?

A. That is correct; and it did not include the cost of [186] the wells.

Q. Do you mean the cost of the abandonment of the wells?

A. The cost of the abandonment or the taking up of the pipe out of the wells.

Q. Did you estimate the cost of the abandonment of the wells at so much per well?

A. Well, I didn't. I wouldn't know what it was. Clements told me that—I don't remember whether Clements told it to me at that time or in the negotiations or when it was but—

Q. Let's limit your answer to any period prior to the time when you signed the contract and not to anything that occurred after that.

A. Clements told me that the wells would net us 50,000 to 100,000 feet. And, of course, in my figures, and when I said exclusive of the wells, I meant that the wells were such an item that I kept a mental separation of that: and I wanted to make sure that you understood that what I was talking about was the other materials because the wells would not go by the ton. I wouldn't figure that by the ton.

(Deposition of Morris Ferer.)

Q. What was your estimate of the cost of abandoning the wells or what figure were you using in your calculations?

A. I don't remember. I think that we figured at that time the footage that I have mentioned before and that the material would be worth—

Q. No. I am talking about costs now. [187]

A. I am trying to get at how I arrived at it, how the material would be worth, in other words, from \$50,000 to \$100,000, but I don't remember whether I figured that net or less the cost or how much. I don't really remember that.

Q. You don't recall whether the figure of \$50,000 to \$100,000 was profit or just gross proceeds, without deducting costs?

A. I don't remember that. As I tell you, I am very hazy on that. I was very much interested in the footage that he gave me at that time, which, of course, was what I was particularly interested in. He may have told me at that time that it cost possibly \$250 or \$300 or \$500 a well or he may have told me that later. I can't tell you that. I am hazy on that.

Q. Did you make any inquiry of him at that time, on that date that you and he examined the property, as to what the cost of abandoning those wells would be when he said that there would be a quantity of recoverable casing of between 50,000 and 100,000 feet?

A. I may have. It would seem logical that I would. We had several discussions and I don't know whether it

(Deposition of Morris Ferer.)

was at that time or a few days later or at a later date. It would be very hard for me to answer that question and state definitely.

Q. Were you leaving the matter of the estimates and valuations on the recovery on the casing from the wells and [188] the cost of abandoning the wells to Mr. Clements?

A. Yes, because it was the only thing I could do, knowing that I was so inexperienced on it.

Q. Were you also leaving to him the matter of the abandonment of the wells?

A. Well, we hadn't gotten that far but I intended to leave that all to him. I left the rest of it to him and the supervising of the job.

Q. Was there any mention on that date, and when I say that date I mean the date when you and Mr. Clements examined the property, of the exclusion of gas lines running to certain of the wells on the property?

A. No, sir.

Q. If we can summarize those figures, what was your estimate at that time of the entire gross proceeds that you expected to receive, that is, before division between you and Mr. Clements, the entire gross proceeds that you expected to receive on all of the equipment and facilities that you expected to take off?

A. That would be a hard question to answer, Mr. Paradise. As I have told you before, this thing was so approximate in every way, shape and form, that any real figure would be almost a pipe dream. I can tell you that I anticipated making a substantial profit for that kind of

(Deposition of Morris Ferer.)

a deal that would necessitate that amount of investment both in initial cost and taking it up and equipment and overhead items [189] involved.

Q. Did you make any estimate, within limits between a minimum and a maximum, of the gross proceeds you expected to get, entirely aside from the cost of doing your work?

A. I might have made an estimate, a mental estimate. I don't remember exactly what it was and I would just be kidding myself and I am not in the habit of kidding myself. I tried to be conservative about it and hoped that we would make a real profit commensurate with the project involved.

Q. Do you have any recollection whatsoever of the amount of gross proceeds that you expected to get?

A. No; I don't. It would be so vague and it turned over so many times in my mind and I had so many different figures that it would be strictly guesswork and it would be useless for me to set a figure because I would be setting a figure that I might have formulated since then. I can't give you an intelligent answer on that.

Q. Is there anything from which you could refresh your recollection as to the estimates that you made at that time?

A. Nothing except my mental attitude.

Q. Do you recall the estimate that you made, within perhaps minimum and maximum limits, of the total costs which would be incurred by you and by Mr. Clements in connection with doing the work?

A. No, for the same reason as to the profits; it was all too much guesswork. [190]

(Deposition of Morris Ferer.)

Q. Is it the same answer as to the anticipated amount of profits? Did you make any estimate whatsoever as to the amount of profit that you expected to make, that is to say, the excess of the gross recovery over and above your costs? A. Yes; the same answer.

Q. You made no specific estimate? A. No, sir.

Q. Did you make any estimate, specific or otherwise?

A. As I told you, I made many mental estimates but they kept changing because it was hard to try to get a figure as to how much was there and how much it would cost and how much there would be. The only estimates that I could make that were anywheres near definite were the question of the hauling or the question of a lump tonnage basis on removing the material.

Q. What was the main reason that you couldn't make a specific estimate? Was it, as you told me, that you couldn't tell the specific quantity or the weight and length of the pipe lines and the quantity of the casing in the wells?

A. That is correct because there was nothing definite about the quantity or length or weight that we would get out of it. We knew that we were going to get everything on there and anticipated everything on there.

Mr. Paradise: I move to strike the witness' answer in so far as his statement concerns what he knew. [191]

Mr. Krasne: Let the witness finish his answer if he hasn't.

Q. By Mr. Paradise: Did you finish your answer?

A. I don't remember. You interrupted me.

Q. I didn't mean to interrupt you. I am sorry.

(Deposition of Morris Ferer.)

A. That is all right. Will you read the answer?

(Answer read by notary.)

A. When I say we knew, I mean to say we figured on everything that was on there, on the property, and we expected to get everything on the property with the exception of the items that were to be excluded. I figured my price with that thought in mind and hoping that our profits would be greater than we figured on. We couldn't tell whether we would get so many thousand feet of pipe or so many hundred thousand feet of pipe. So I tried to be conservative and figured it that way.

Q. The quantity of the tonnage of the refinery equipment, that is to say, the stills and boilers and engines and so on, you could estimate within reasonably accurate limits, could you not?

A. Anything that was above the surface, we could get a rough idea. We could approximate it but it varies considerably and it proved it varied considerably. There was nothing accurate about it but what was on the surface we could get a rough idea of.

Q. What were the major items of refinery equipment you [192] were purchasing?

A. I can't get very technical with you but there were boxes of condensers with pipe in them.

Q. What was your estimate of the tonnage of any one of those condenser boxes?

A. I can't answer that. I haven't got that in mind.

Q. At that time could you make a reasonably accurate estimate of it by looking at it?

(Deposition of Morris Ferer.)

A. Yes; in my opinion I could make what I thought was a reasonably accurate estimate but that doesn't mean it would be so because there were boxes there with pipe in them and they had supports and they had steel or they were surrounded by steel, and it was all a guess.

Q. But, from your experience in handling that sort of equipment for a period of, I think you said, some 20 to 25 years, you could form a reasonable estimate of the tonnage involved in that piece of equipment just by looking at it, is that correct?

A. When you say my experience in handling that equipment, as I told you before, this is the first time I ever handled a refinery; but, when you speak of equipment, engines, pipe and so forth, I made an estimation at that time but I don't remember what it was because I lumped it all together.

Q. The same is true, I suppose, of the various tanks and boilers that were located on the producing end of the [193] field and referred to as producing facilities, is that correct?

A. Yes; the same is true of the tanks and the boilers. The boilers were easier to estimate because they are more a common item. The tanks were also a headache. That was another item where most of the tanks were galvanized and we didn't know whether they were rotten on the bottom or whether they were good tanks.

Q. You are talking now about condition rather than weight, are you? A. Yes.

Q. I was directing my question just to tonnage.

A. I couldn't personally estimate the tanks because I didn't have enough experience and, if I did have, I

(Deposition of Morris Ferer.)

wouldn't figure them as having much value because they were corrugated tanks. They might have been rotten or they might not have been.

Q. You say that the quantity which you could not estimate on a tonnage basis was the equipment that you couldn't see, that was under the surface, is that correct?

A. That is correct. And that, of course, we could guess at but we didn't know whether we were 50 per cent right or 200 per cent right or 10 per cent right.

Q. The total quantity that you were estimating was, I think you said, between 3500 tons and 6,000 tons?

A. No. I said between 3,000 and 6,000 tons. [194]

Q. What proportion of that estimate did you allow for the equipment and facilities that were under the ground?

A. I can't answer that again because I lumped it all together, as I told you.

Q. You were able to make an estimate of the tonnage of the equipment on the surface which you saw, that is to say, the tanks and the boilers and the loose steel, is that correct?

A. I don't know what you mean by loose steel.

Q. Mr. Clements mentioned yesterday that you and he expected to get some steel plates and supports for the stills and walkways and other items of that sort?

A. Well, that wasn't loose. That was part of the equipment. It was all intact.

Q. Was there any loose steel that you expected to get?

(Deposition of Morris Ferer.)

A. There was a negligible amount of rods, sucker rods, and pieces of angle iron but it didn't amount to anything. Everything was attached and in place and required labor to take it out.

Q. With that qualification that you made to my question, will you answer my question as to what estimate you made of the tonnage of the various items that you were able to examine specifically because they were on the surface of the property?

A. I can't answer as to the tonnage. I can only tell you to the best of my recollection. And the reason that [195] I am so vague about being able to give you tonnage is that the most or the biggest proportion of all of this material was hidden tonnage.

Q. The largest proportion?

A. Yes. The largest proportion was hidden tonnage. It was in the pipe and the pipe was in the wells and it was crisscrossed all around the property. And the tonnage of material that was above the ground was the smallest part of the deal and that is why I just had to guess and really gamble on the whole thing.

Q. When you say the largest proportion, can you give us more information about that? Can you state it in percentages?

A. I couldn't give it to you.

Q. It was well over 50 per cent? Is that what you mean to tell me?

A. Oh, yes.

Q. Did you make any calculation of the length of those pipe lines from the showing on the map of the location of the lines?

A. No.

Q. Did you attempt to trace on the map that Mr. Duncan gave you the length and location of those lines?

(Deposition of Morris Ferer.)

A. No. And I don't remember who told it to me—it might have been Clements or might have been Duncan—while the map showed lines, some of the lines had been taken out [196] or changed and so forth. So again we were up against that same guessing contest.

Q. In other words, you realized at that time that was not an accurate map of the property as it existed at the time you inspected it?

A. I didn't realize anything. I realized that the map would give us as much information as we possibly could get, that is all. In fact I again didn't pay much attention to the lines on the map because I wanted to go out and see what I could see for myself.

Q. You were not relying on the map, then, is that correct?

A. Well, I don't know what you mean by that, whether I was relying on the map or not. I didn't buy the material based on any tonnage that the map might call for.

Q. Mr. Clements testified yesterday that at the time you and he examined the property and were looking at the map there were various wells shown on the map that were not on the property. Do you recall that?

A. I recall his testifying to that.

Q. Do you recall his telling you that at the time you were on the property?

Mr. Krasne: May I ask was Mr. Clements' testimony that there were wells shown on the map that were not on the property or that, in addition to the wells shown on the map, there were actually other wells on the property? [197] Do you remember?

(Deposition of Morris Ferer.)

Mr. Paradise: I don't recall Mr. Clements' exact testimony on the point.

Q. But do you recall, Mr. Ferer, any conversations with Mr. Clements at that time to the effect that the map did not show the wells or the pipe lines as they existed on the property? A. No, sir.

Q. Following your inspection of the property on that occasion with Mr. Clements, did you make subsequent examinations of the property before the contract was signed on January 17, 1941?

A. I think we got a letter from Mr. Davis stating that they were accepting our offer, and we made another trip up to the refinery. There was Mr. Clements and my brother from the east and another relative of mine. We went up again on the property.

Q. Do you recall about when that occurred?

A. It was on a Sunday, somewhere between January 2, 1941 and the signing of the contract.

Q. Did you make any more specific examination of the property on that date than you did on the previous date?

A. No; just a prima facie examination like we did before. I showed my brother and my brother-in-law, I think it was, and another relative—I don't remember but I think it was a cousin of mine—what we had bought. And when I [198] say showed them what we had bought, I mean the property. I showed them the wells and I showed them the other materials and told them, as I have been telling you, that we were gambling on this.

(Deposition of Morris Ferer.)

Q. What were the names of the persons who made that trip?

A. Mr. Clements and Mr. Hyman Ferer—

Q. Is that your brother?

A. That is my brother. And Mr. M. D. Goodrich and I think Mr. Harry White and myself.

Q. Was there any Richfield employee or representative present at that time?

A. Do you mean in our party or who went around with us?

Q. Yes. A. No.

Q. Did you talk to Mr. Duncan on that occasion?

A. I don't remember. I might have but I don't remember.

Q. You don't recall any conversations with Mr. Duncan then? A. No.

Q. What was the next conversation following that date with any Richfield employee? Do I correctly understand that, other than that letter that you received from Mr. Davis between the date of your first examination and your second examination, you had no other conversations with any Richfield employees? [199]

A. That is correct.

Q. So that the only conversation that you had with any Richfield employee prior to the date of your second visit which you have just described was that conversation with Mr. McGahan? A. That is correct.

Q. What was the next conversation that you had with any Richfield employees or representatives in connection with this transaction?

(Deposition of Morris Ferer.)

A. Only with Mr. Davis. I brought him up a cashier's check for \$22,000.

Q. Do you recall on what date that occurred?

A. I think it was January 8th.

Q. And that occurred in his office?

A. Yes, sir.

Q. And who were present?

A. I think Mr. Davis and Mr. Clements and myself. McGahan might have been there but I wouldn't say definitely.

Q. Did you have any extensive conversation with Mr. Davis at that time?

A. No; nothing extensive except that he told us we bought everything on there with the exceptions. And we talked about those exceptions and then I think he called you and you were tied up or you made a later date that we should come up and sign the contract or go over the contract.

Q. Do you mean that he called me on the telephone?
[200]

A. Yes. And Mr. Davis handed us a memorandum of the sale, a second sheet of the sale, and that was about all. There wasn't any other discussion of any importance.

Q. Did you discuss at that time any of the items of equipment or facilities which you were to purchase?

A. No; we didn't discuss anything. The memorandum was practically self-explanatory.

(Deposition of Morris Ferer.)

Q. Did you have any discussions about any of the items in the memorandum? A. No.

Q. Did you inquire of Mr. Davis at that time as to the length or size of the pipe lines?

A. Not that I remember.

Q. Was there any mention of the pipe lines at that time by either you or Mr. Clements or Mr. Davis or Mr. McGahan? A. Not that I remember.

Q. Was there any mention by any of you of the oil wells or the casing in the oil wells?

A. No; there was nothing to mention. We bought everything and expected to get everything except the items that were excepted. I think that is about the main topic of conversation that there was outside of there might have been some conversation about some other plants that they had for sale or something like that. But there was no conversation because our offer covered everything and his memorandum covered everything and the items that were to be excepted, [201] we understood. We had already made the deal and we had given them our money and there wasn't anything to discuss that I remember.

Mr. Paradise: I move to strike the answer of the witness except in so far as it relates to the conversations on the ground that it is a conclusion and opinion of the witness and is unresponsive to the question.

Q. Was there any mention of the abandonment of any of the wells? A. No, sir.

Q. Had you already at that time submitted your offer of \$22,000? A. Yes, sir.

(Deposition of Morris Ferer.)

Q. You had prior to that?

A. Prior to the date that I saw Mr. Davis?

Q. Yes. A. Yes.

Q. At the time that you were making up your offer of \$22,000, did you make a more specific estimate of the approximate tonnage in the pipe lines and the casing in the wells than you have testified to before?

A. No, sir.

Q. You were still guessing as to the quantity?

A. That is right.

Q. You made no inquiry of any representative or employee of Richfield Oil Corporation as to the quantity or [202] size or weight of the pipe lines or the casing in the wells? A. That is correct.

Q. At that conversation with Mr. Davis was there any mention of the exclusion of the gas lines running to certain of the oil wells on the property?

A. Well I don't remember whether it was at that conversation or the conversation in this office but there was some water line mentioned and a gas line for the superintendent's house. When you say gas lines, I don't know what you mean by gas lines. But I recollect that in one of the conversations, either at Mr. Davis' office or up here in your office at the time of the drawing of the contract or at the time of your having the contract, the water line was mentioned because you were going to keep this superintendent's house there and a gas line for gas, one gas line. That is the only conversation there was that I remember about any gas lines at any time.

(Deposition of Morris Ferer.)

Q. Do you recall when that conversation took place? Was that in the conversation with Mr. Davis?

A. Either then or up here, I don't remember which. But they were only a few days apart. But it is very hard for me to pin this kind of a conversation down to whether it was one day or two days following. After all, I didn't anticipate any trouble on this kind of a deal.

Q. Do you recall exactly what was said with respect to the gas lines? [203]

A. No; there was nothing said other than just that they wanted to maintain a water line for the superintendent's house and for the cattle that they were going to have one there and a gas line so that the superintendent would have gas; that we couldn't disturb the gas line; that he had to have some kind of heating or something to that effect. That is the general trend of the conversation.

Q. Who was it that informed you of that?

A. I don't remember but somebody in the conference.

Q. It was either Mr. McGahan or Mr. Davis, was it?

A. Or it might have been you. I don't remember. As I told you, I don't remember whether that was in the conversation down there or whether it was up here at the time when we were discussing the things that were excepted. That was actually the whole gist of our conversation in all of these conferences, was things that we couldn't take.

Q. Do you know or do you recall whether there was a conversation as to the number of gas lines that were excluded?

(Deposition of Morris Ferer.)

A. I recall that the superintendent's house was the topic of conversation as to a gas line.

Q. In other words, that would be one end of the gas line?

A. I don't know whether it was one end or not. I know that my trend of thought at the time and the conversation was the fact that we had to keep water for the superintendent's house and had to keep gas there; that he had to have something to cook by because he lived there. [204]

Q. I merely meant that the gas lines that you were talking about discharged into the superintendent's house?

A. I guess so. I guess that is what they were talking about.

Q. Did you know to how many wells those excluded gas lines ran? A. No.

Q. Was there any discussion of that?

A. No. I didn't even know they came from wells. I didn't know that.

Q. Where did you think they came from?

A. Well, I didn't know. They might have had gas companies. I didn't know anything about that.

Q. There was no discussion whatsoever about that?

A. No; no discussion whatsoever.

Q. Of where the gas lines ran? A. No, sir.

Q. I call to your attention, Mr. Ferer, paragraph 1(h) of the contract, dated January 17, 1941, between Aaron Ferer & Sons and Richfield, and ask you to read it. Will you read it out loud, please?

(Deposition of Morris Ferer.)

A. Paragraph 1(h). "gas pipe lines connecting wells on the land above described to the superintendent's house (P. R.-1494)".

Q. You examined this contract? Or I believe you stated in your affidavit that there were two drafts of this [205] contract, is that correct?

A. I didn't state there were two drafts. I stated that there was one draft and it was changed. What type of draft it was I don't know. But I stated that I asked for a change in the contract and that change was made.

Q. You examined the first draft of the contract and then asked for changes, is that correct?

A. I asked for one change there in one paragraph and I presume that this final contract is the identical or the same contract that the other one was. I don't remember.

Q. That change that you requested was for the addition of the words "metal and lumber", was it not?

A. "All metal and lumber"; yes.

Q. That occurs in the same paragraph, does it not, of the contract?

A. I don't know. I will look and see. I don't know the contract by heart.

Q. This is the paragraph here.

A. Is this what you call a paragraph or is this all the same paragraph?

Mr. Krasne: Let the record show that the words referred to by counsel appear in the same paragraph but not the same sub-paragraph.

(Deposition of Morris Ferer.)

A. What do you want me to look at, Mr. Paradise?

Q. By Mr. Paradise: Mr. Krasne's statement is sufficient for my point. Upon reading that paragraph 1(h), which [206] states, "gas pipe lines connecting wells on the land above described with the superintendent's house", did it not occur to you from a reading of that paragraph, before you signed the contract, that the gas pipe lines that were being excluded from the sale ran from the superintendent's house to certain of the wells on the property?

A. No; it never occurred to me. As I told you, when you talked about having a gas line to the superintendent's house and you were going to keep that house and you wanted a water line there, I think it is reasonable to assume that you wouldn't want us to go in there and tear up that gas line and wreck the man's mode of living. So the thought never occurred to me. In fact, as I tell you, I didn't know that the gas came from the wells.

Q. There was discussion that the lines were to be left on the property for the purpose of supplying gas to the superintendent's house, was there not?

A. Yes; I think there was some discussion. That is one of the items that was excepted at the time with many of the other items. Your stress was particularly the water line because the superintendent had to have water and water for the cattle and the gas line, and that we shouldn't touch the gas line. But I don't remember it as gas lines. I remember it as gas line. But that is probably a technical point and I wouldn't give it a second thought.

(Deposition of Morris Ferer.)

Q. Did not this provision in the contract, which [207] excludes gas pipe lines connecting wells on the land above described with the superintendent's house, call to your attention the fact that the gas lines were connecting the wells on the property?

A. No. I didn't give it any thought at all. In fact I think that on your map you show in red there one line that goes to some point, that is, a gas line that you excluded. That is about all there was but where the gas came from never occurred to me.

Q. Did you examine that map at the time you signed the contract, Mr. Ferer?

A. I think I looked at it. I won't say that I examined it minutely. I had every confidence in Richfield and I didn't have a lawyer here to draw up this contract.

Mr. Paradise: I move to strike the witness' statement as to his confidence as being unresponsive to the question.

Q. I show you, Mr. Ferer, the map that is attached to the original copy of the contract dated January 17, 1941, that being attached as an exhibit thereto, and ask you to point out the gas line marked in red that goes from the superintendent's house to any well or wells on the property.

A. As I stated, I am not a good map reader and, if you will show me the superintendent's house, maybe I can find it.

Q. The superintendent's house appears to be on the westerly portion of the property and marked "Superintendent's frame dwelling house, 28 feet x 52 feet (P.

(Deposition of Morris Ferer.)

R.-1494)". [208] Now I call your attention to a line marked in red, stating "2-inch gas." Do you follow that line to any wells on the property?

A. Yes; I see that line and it goes to what is marked well No. 36. And also on there it states, "and any extensions of gas line necessary to furnish gas to Duncan's house."

Mr. Krasne: So that the record may be more complete, it might show that the line to which counsel has directed the witness' attention and leading up to the well bearing the number 36 on the map appears to be the only gas line leading up to any well that is in red and that the pipe lines leading to the other wells shown on the map are not in red.

Q. By Mr. Paradise: But there are various other lines shown in red on the map, are there not?

Mr. Krasne: Yes, sir; but not gas lines to any well, unless counsel can direct my attention to one.

Q. By Mr. Paradise: This well No. 36 is not outlined in red, is it?

Mr. Krasne: No; but the gas line leading up to the well is.

Mr. Paradise: My question was directed to Mr. Ferer.

Mr. Krasne: Maybe we can stipulate, Mr. Paradise, that well No. 36 itself is not circled in red and that in fact none of the wells shown on the map are circled in red. I offer that as a stipulation, if you are willing to accept it. [209]

Mr. Paradise: I will let the map speak for itself.

(Deposition of Morris Ferer.)

Q. Did it occur to you or did it not occur to you, Mr. Ferer, that, with the gas line shown in red leading from the superintendent's house on this map and going over to well No. 36, it would be necessary to keep that well in operation in order that that gas might be furnished?

A. No; because, as I told you before, I didn't know where the gas came from.

Q. The line shown in red, the gas line, has definite boundaries, has it not, one terminal being the superintendent's house and the other terminal being well No. 36?

A. Yes; according to the map, it has.

Q. So that the gas must have come from the well?

A. I wouldn't know that. I suppose so, according to that line. But I wouldn't know anything about it.

Q. When that discussion occurred, did you inquire whether that well was to be excluded from the transaction?

A. I did not.

Q. Was there any mention of wells at that time?

A. No; there was no mention of any wells.

Q. Did you inquire whether it would be permissible to abandon well No. 36 at that time?

A. I didn't make any inquiry at all because, as I tell you, a thing like that would never enter my mind and I didn't know where the gas came from.

Q. There is a legend which you read from the map in [210] connection with well No. 36, in red, which states, "and any extensions of gas line necessary to furnish gas to Duncan's house." Did it occur to you from a reading of that legend that it would be necessary to exclude other gas lines to other wells?

(Deposition of Morris Ferer.)

A. No. If anything, that would make me think they were getting the gas from some gas company and an extension might be necessary. As I tell you, I never knew the gas came from the gas well.

Q. You saw gas seeping from the caps on the wells, however, when you examined the property with Mr. Clements, did you not?

A. I did not. I just said that I smelled gas.

Q. You didn't see any other gas companies in the neighborhood or any gas companies in the neighborhood from which it could have come, did you?

A. No; except I saw a lot of tanks and to an ordinary layman they might have been gas tanks. I don't know.

Q. In spite of what appears on this map that you examined at the time you signed this contract, Mr. Ferer, did you expect to abandon those particular wells that are shown on the map?

Mr. Krasne: I object to the question on the ground that it assumes facts not in evidence. I may be in error but I believe the witness testified in response to counsel's question with respect to the map that he saw it but made no [211] minute examination of it. I may be in error but I believe that was the witness' testimony.

Q. By Mr. Paradise: May I ask you, Mr. Ferer, if you did examine this map at the time you signed the contract or before the time you signed the contract?

A. Well, when you say examined, I glanced at it. I didn't make a thorough examination of it. I don't think the map came with the contract. I think the map

(Deposition of Morris Ferer.)

was delivered later but I am hazy on that. I think the contract was mailed in to us and we signed it and returned it to you from my office and I don't think the map was attached to the contract. I think either you delivered the map to us or a messenger came with it. I am still very hazy on that and I am not sure.

Q. You don't know whether the map was attached to the contract at the time it was signed?

A. I don't remember.

Mr. Krasne: I will say for the purpose of the record and to counsel that it would appear from the executed copy of the contract which Mr. Ferer has delivered to me that what happened was that Richfield or Mr. Paradise as its attorney did mail the copies of the contract to Mr. Ferer for signing and that shortly thereafter there was delivered to Aaron Ferer & Sons the exhibit or the map because the contract which I have shows a receipt for the map which would appear to have been subsequently executed. [212]

Mr. Paradise: I don't understand your statement, Mr. Krasne. You don't intend that as testimony in this deposition, do you?

Mr. Krasne: No. I am simply trying to get this thing straight between yourself and myself as counsel, if we can.

Q. By Mr. Paradise: Did you examine the map prior to the time when you signed the contract, whether it was attached to the contract at the time you signed it or not?

A. May I have that question again, please?

(Question read by notary.)

(Deposition of Morris Ferer.)

A. I didn't examine the map prior to the signing of the contract and I don't remember whether I looked at the map at the time of signing the contract or not because, as I tell you, I am not sure whether the map was attached to the contract. In any event, I didn't make a minute examination of the map.

Q. But at no time prior to the signing of the contract did you make any inquiry as to the abandonment of the wells, either well No. 36 or any other wells, as to your right to abandon them?

A. Do you mean of Richfield?

Q. Yes. A. No, sir.

Q. In your affidavit, Mr. Ferer, that is attached to the plaintiff's motion for a summary judgment, there is a statement concerning a request by you for the inclusion of [213] certain language. I call your attention to paragraph 4 of your affidavit and ask you to re-read the same. Have you finished it? A. Yes.

Q. That conversation that you mention in paragraph 4 of your affidavit occurred when, Mr. Ferer?

A. In your office at the time we were discussing the final contract.

Q. How many conversations were there in my office? Do you recall?

A. I can only remember one.

Q. At that conversation that you are speaking of was a draft of the contract presented to you?

A. I think so; that there was a draft of the contract presented to me and that is the time that I asked you to make a change in that paragraph and have you change it because—

(Deposition of Morris Ferer.)

Q. I think you have already answered the question. Do you recall any conversation in my office, that took place prior to that date, at which the terms of the contract were discussed with you and Mr. Clements and Mr. Davis, before any draft of the contract was prepared?

A. Well, as I tell you, I only remember of being up here once.

Q. At this conversation at which you requested a change in the draft that was presented to you, will you state what [214] occurred?

A. We were discussing mainly the items that were to be excepted.

Q. Who were present at the conversation?

A. I think Mr. Davis, Mr. Clements, yourself and possibly McGahan, although I am not sure on that point. I know definitely that Mr. Davis, yourself and Mr. Clements and myself were here.

Q. And Mr. McGahan may have been here but you don't recall?

A. That is right.

Q. Now, what were the conversations?

A. The conversations were about the items that were to be excepted and there was something in the contract or draft, or whatever it was, that you handed me, and I don't remember exactly what it was, that I didn't quite understand and I said, "Well, as long as we are getting everything and we have bought everything with the exception of the items that you are excluding—" if you will remember, I said, "I haven't any lawyer up here. If you will just put in there 'all metal and all wood', that will cover everything except the items that you are excepting and I see nothing wrong with the contract."

(Deposition of Morris Ferer.)

Q. Do you recall stating that you had no lawyer here?

A. I am pretty sure that I stated that but I won't state that definitely but I think that I stated that. I [215] might have been kidding you at the time but I think I stated it.

Q. Your affidavit states that at that meeting there was presented to you a draft which contained the following provision, which is quoted in your affidavit as follows: "Said equipment and facilities so to be sold include all pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors and tanks, now located on said land, all subject to the exceptions hereinafter provided." Do you have that draft which contains that language?

A. No. I didn't take anything with me from that but I think the reason I knew what it stated was that you added the item of "all metal and all lumber" and no other changes were made.

Q. Then, your affidavit does not purport to quote what the language of the draft was but merely your recollection of the language of the draft?

A. Merely my recollection of the language of the final draft.

Q. But in your affidavit, where you quote from the language of the draft, that is your recollection, or did you have a copy of the draft before you when you prepared this affidavit?

A. No; I didn't have a copy before me. It was my recollection and, as I stated, the wording of the contract.

(Deposition of Morris Ferer.)

Q. Do you recall that at the time that discussion took [216] place about the phrase "metal and lumber" there was a discussion of what items were to be included in the sale?

A. No. I recall more of the discussion or practically all the discussion was mostly on what items were not to be included and also the discussion was about putting up fences and filling in the ditches for all these cattle you were going to have there and also there was a discussion of certain lines that were to be cut off at the tanks that you were to retain, these farm tanks, as they call them.

Q. Do you recall that as a part of the discussion there was mentioned by you or by Mr. Clements the fact that you wanted to obtain the metal walkways in the refinery property and the supports for the various stills that were being purchased by the Casmite Company?

A. Well, there might have been some discussion about it. I don't recall any particular outstanding discussion on that score because we discussed that everything on that property was to go with those exceptions and with the exceptions that you mentioned. And that is the reason I said to you, "Well, keep out the items that you don't want to go, that you have sold or that you are retaining, and put in there 'all metal and all lumber' and that covers everything."

Q. Do you recall requesting information as to what supports for the various stills and other equipment that was being purchased by the Casmite Company would be left on the property and would be sold to you under this contract? [217]

A. There might have been some discussion about that. It narrows back down again to what you were going to

(Deposition of Morris Ferer.)

retain and I think you said, you or Mr. Davis, that the Casmite Company, if they are the people that you sold those stills to, or whatever they are,—that all they bought was the stills and that we had to remove the bricks after they took them out and there were some supports there and we discussed that they didn't go.

Q. Do you recall that either you or Mr. Clements requested the privilege of removing the supports and having the steel walkways and supports and overhead lines?

A. There might have been a discussion but it doesn't stand out in my mind.

Q. Do you recall that Mr. Davis was requested by either you or Mr. Clements to phone Mr. Burke of the Casmite Company at that time and to inquire at what point those stills would be cut off and what quantities of steel supports and overhead lines would remain for your purchase?

A. I remember that there was a question there; that Mr. Davis sold the stills to this company and that he either called or was going to call someone from that company and have them understand that the stills were to be disconnected at the point of the stills and that nothing else was to go.

Q. And did he also state at the conclusion of that conversation that you were to have those metal supports and steel walkways and overhead lines? [218]

A. I don't remember. I would take it for granted that they would go because they were not excepted and everything that was on the property was to go.

(Deposition of Morris Ferer.)

Q. Isn't it true that that was what you were inquiring about, as to whether you were to have the privilege of taking those things? A. No.

Q. Who brought up that subject about the supports and the steel walkways and the overhead lines?

A. I don't know. I don't remember whether there was any discussion brought up about that unless it was in the question of what was to go and what wasn't to go. You were enumerating the items you had sold and anything else that wasn't sold was to go to us.

Q. Isn't it true, Mr. Ferer, that you raised the point when you requested the addition of "metal and lumber" and that you read that list of pipe lines, valves, fittings, buildings, boilers, pumps, engines, motors and tanks, and stated that that list did not include the sale of supports for the tanks or the overhead lines or the walkways or other miscellaneous equipment around the refinery, that were to be sold to you?

A. No; I brought no question up about that.

Q. You recall asking for the inclusion of the words "metal and lumber"?

A. Oh, yes; I definitely asked for it because— [219]

Q. I believe you have answered the question. At the time you asked for it, was not the discussion between the persons who were present in the room concerned with those matters that I have just mentioned, that is to say, the steel supports and the overhead lines and the steel walkways and the other loose metal on the surface of the land?

(Deposition of Morris Ferer.)

A. No, sir; my request for all metal and all lumber was to take in everything that was on that property.

Q. I am asking for what you said rather than what you intended at that time.

A. I said to include all metal and lumber for that reason, to take in everything that was on that property except the items that you had sold or were retaining. That was definitely my reason. Of course, as a layman, I took it for granted that the words "all metal and all lumber" would cover everything.

Mr. Paradise: I move to strike that as the witness' conclusion, as to what he took for granted.

Q. Was there any discussion at that time of the quantity of the pipe lines or the size or weight of such pipe lines?

A. There was no discussion except we requested of you a line that was an 8-inch line that ran from one of the tanks on part of the property to one of the other companies; that it wasn't necessary to have an 8-inch line and that we would substitute a 3-inch line. And you said that later [220] you would look into it and, if you could do it, you would do it and I think you permitted us to do it later on.

Q. When you say "you", do you mean me personally or Mr. Davis or Mr. McGahan?

A. I suppose it was Mr. Davis that I was directing the conversation to, either I or Clements. I don't remember. Maybe both of us discussed it. I don't remember whether I did it or Mr. Clements did it but that was the only reference that was made to the size or weight or length or anything else in that discussion in regard to the pipe lines.

(Deposition of Morris Ferer.)

Q. At the time you were talking about metal, was there any discussion whatsoever of the casing in the wells or the wells themselves? A. There was not.

Q. At the time you were mentioning the use of the phrase "metal and lumber", were you also not talking about the loose scrap metal that was lying around on the surface on the land, including the pile of wire line and loose corrugated iron sheets?

A. I was talking about everything on the property. As far as the loose metal is concerned, there was such a small quantity that there was not enough to make an issue out of it. And, when I asked you to put the phrase "all metal and lumber" in there, I had reference to everything, including the pipe, the pipe line in the wells and the pipe line and all the lumber and everything that was on the [221] property, and that is what I purchased and had in mind purchasing.

Mr. Paradise: I move to strike that as not being responsive to the question. I am asking solely for your conversations rather than what you thought or intended.

Mr. Krasne: In other words, if that is what you told the people present at that meeting, please so state. Strike that out. In other words, if that is what you told the people at that meeting, please state so for the purpose of the record.

Mr. Paradise: I think the witness understands the question.

Mr. Krasne: I don't know whether he does or not.

Q. By Mr. Paradise: I am asking for what was said in connection with your request that the words "metal and lumber" be added.

(Deposition of Morris Ferer.)

A. I said, if you would add the words "all metal and all lumber", it would cover everything with the exception of the items that you were keeping out and that would be the whole thing, that that would cover the whole thing, and that is all that I felt was necessary or the important part of the contract as far as my end was concerned.

Mr. Paradise: I move that the last sentence as to what Mr. Ferer felt be stricken as not responsive to the question.

Q. Did any Richfield representative at that meeting, either Mr. Davis or Mr. McGahan or myself, mention the [222] casing in the wells or the abandonment of any of the wells? A. No, sir.

Q. There was no mention of that at any time?

A. No, sir.

Q. Did you inquire at that time as to the quantity of any of the recoverable casing or does your former answer include that? A. That is correct.

Q. That there was no mention of that subject?

A. I don't quite understand you.

Q. My question is this. As I understood your former testimony, you had no information as to the quantity of the casing in the wells or the quantity of the pipe lines because it was underground and you couldn't examine it and, therefore, you were just guessing as to the quantity that you expected to purchase?

A. That is correct.

Q. Did you inquire at that time in that conversation or in any other conversation as to the quantity that was there?

(Deposition of Morris Ferer.)

Mr. Krasne: Inquire from whom?

Q. By Mr. Paradise: That is, from any employee or representative of the Richfield Oil Corporation.

A. No, sir.

Q. You were interested in that quantity?

A. I was interested but, as I told you before, Mr. Clements told me what he thought was recoverable and that [223] was settled in my mind.

Q. That is, recoverable from the wells?

A. From the wells; yes, sir.

Q. Did Mr. Clements tell you what quantity there was in the pipe lines?

A. No; he didn't tell me that because he couldn't guess any more than anyone else because it was hidden. It was all buried underground, all that portion of it.

Q. I think you already testified early this morning that something in excess of 50 per cent of the quantity of equipment and facilities that you expected to salvage was represented by the pipe lines and the casing in the wells?

A. Yes; considerably over 50 per cent.

Q. But is it correct that you made no inquiry at all of any Richfield employee as to what that quantity was?

A. No. After that rebuff, or I wouldn't call it a rebuff, but after being told that there was no information available, I just decided to paddle my own canoe with Clements, who I felt was experienced and qualified enough to guide me along those lines.

(Deposition of Morris Ferer.)

Q. That was approximately a month prior to the conversation in my office, was it not, your conversation with Mr. McGahan, at which you said he did not give you that information?

A. I would say approximately a month; yes, sir.

Q. But, as I recall your testimony, you didn't inquire [224] of Mr. McGahan as to what quantity there was in the pipe lines or the length of the pipe lines?

A. No, sir.

Q. And you made no other inquiry of Richfield about it? A. No, sir.

Q. Or of any Richfield representative?

A. No, sir. If you will let me add, there is another reason.

Q. This will have to be off the record or I will have to object to it.

Mr. Krasne: Do you want to explain your last answer? A. Well, let it go.

Q. By Mr. Paradise: Was the map considered at the time of that conversation? A. What map?

Q. The map that is attached to the contract.

Mr. Krasne: What conversation?

Q. By Mr. Paradise: We are talking about a conversation in my office with Mr. McGahan.

A. I don't think so.

Q. You don't recall that any map was shown to you?

A. I don't recall it; no, sir.

(Deposition of Morris Ferer.)

Q. Were there any other conversations subsequent to that meeting in my office that you have just mentioned?

A. Only the one with Davis in his office.

Q. The one with Davis in his office was prior to that [225] meeting, was it not? A. Yes, sir.

Q. Were there any subsequent meetings?

A. No, sir.

Q. Or conversations with any Richfield employees?

A. No, sir.

Q. When did you commence work under the contract?

A. A week or ten days after the contract was signed.

Q. How long did you keep your crew on the property?

A. They were on there up until about a month ago.

Q. At what time did you first take steps to abandon any of the wells on the property?

A. I don't remember the exact day. It was some time in June or something like that; June or the latter part of May.

Q. Of 1941? A. Yes.

Q. That would be some four to six months after the contract was signed, is that correct?

A. Yes, sir; although I am a little hazy on that because I didn't handle that. Clements handled that. But I think that is when the question came up that you were objecting to the oil wells being taken up or something.

Q. At any time prior to that date, either May or June of 1941, did you take any steps to abandon any of those wells? [226]

(Deposition of Morris Ferer.)

A. We discussed it all the time. And then it was raining. There was a terrible rainy period there and no action could be taken. We ran into difficulties all the time on account of rain.

Q. You didn't answer my question. I just asked you whether you did anything about it during that time.

Mr. Krasne: You can answer it yes or no and then go on and explain your answer, if you care to make an explanation.

A. Will you repeat the question, please?

Q. By Mr. Paradise: At any time prior to the date that you fixed, somewhere in May or June of 1941, did you take any steps to abandon any of the wells?

A. No; we didn't and the reason was that it rained. They had a terrible rainy season up there and that ground gets just like gumbo. You can't even walk in it and we were helpless.

Q. Did you make any mention to any Richfield employee or representative at any time before that date in May or June of 1941 of the fact that you either intended to abandon those wells or that you thought you had the right to abandon any of the wells?

A. No; we didn't because we took it for granted that, like everything else we were taking, we would take the wells.

Mr. Paradise: I move to strike the portion of the answer as to what the witness took for granted as not being responsive to the question. [227]

Q. When was the first occasion on which you discussed with any Richfield representative the matter of the abandonment of those wells?

(Deposition of Morris Ferer.)

A. We never discussed it outside of the time that I talked to Mr. Davis or Mr. Kelly or somebody about it after we were told that Richfield were not going to permit us to take the wells.

Q. When was that?

A. I don't remember. I would have to refresh my memory from a letter that you wrote us or something.

Q. It was not prior to the date in May or June that you mentioned, was it?

A. It was not prior to that; no, sir.

Q. At any time prior to the signing of the contract on January 17, 1941, did you make any inquiry of the Division of Oil and Gas of the State of California for its requirements in connection with the abandonment of those well? A. I did not.

Q. Did you direct any of your employees or agents to make such an inquiry? A. I did not.

Q. Did you make any other investigation or inquiry as to the manner in which the wells would be abandoned?

A. When are you asking about?

Q. At any time prior to the date of signing the contract. A. No, sir. [228]

Q. Did it occur to you, Mr. Ferer, either at the time of the signing of the contract or at any time prior to that time, that the Richfield Oil Corporation as the owner of that land would have some interest in the manner in which those wells would be required to be abandoned?

A. Yes; it occurred to me because they stated in their contract with us that we would have to abide by all the State laws and fish and game laws and so forth.

(Deposition of Morris Ferer.)

Q. There is express mention of fish and game laws, is there not? A. Yes.

Q. Is there any mention of the Division of Oil and Gas? Or I think the contract speaks for itself on that. You say it did occur you, then, upon reading the contract that Richfield would have an interest in the manner in which the wells were to be abandoned?

A. Well, no; it didn't occur to me that they would have in the manner that they would be abandoned other than what our contract covered. They stipulated in their contract that everything had to be done in the proper manner and cleaned up properly and everything else.

Q. What provision of the contract are you referring to?

A. I am referring to the clean-up and to the provision of the contract that states that we should clean everything up and that we should comply with all of the laws and so forth. Now what the paragraph is I don't know.
[229]

Q. Isn't it true that the provisions of the contract relating to cleaning up relate to the surface of the property?

Mr. Krasne: I think that is asking the witness for a conclusion. I think the contract speaks for itself on that score.

Mr. Paradise: Perhaps the witness' answer to the last question had best be stricken, then, on the same ground, and I so move, or perhaps the answers to the two preceding questions where he discussed the provisions of the contract. I so move.

(Deposition of Morris Ferer.)

Q. But at the time that occurred to you, Mr. Ferer, did you make any inquiry as to the manner of the abandonment which Richfield should require?

A. No. As I told you, I left that all to Clements.

Mr. Paradise: That is all.

Cross-Examination.

Q. By Mr. Krasne: Mr. Ferer, you referred to a conversation with Mr. McGahan that took place shortly before you went up to the property with Mr. Clements. I will ask you whether or not in that conversation Mr. McGahan told you what, if anything, the Richfield Oil Corporation was interested in selling on the property?

Mr. Paradise: I object to that question on the ground it assumes a fact not in evidence. I believe the witness [230] has testified he didn't recall whether that conversation took place before or after his visit to the property. Is that correct?

Mr. Krasne: I will reframe the question.

Q. You submitted an offer in writing relating to your proposed purchase of the equipment at Casmalia to the Richfield Oil Corporation, did you not? A. I did.

Q. What did you intend to buy by your offer?

A. We intended to buy everything on that property, including all the equipment, wells and everything, except the items that they had sold or were retaining, such as the tanks, the farm tanks, and the items they told us were sold.

Q. Prior to the time that you made an offer to Richfield Oil Corporation in writing, had Mr. McGahan or any other official or employee of Richfield Oil Corporation

(Deposition of Morris Ferer.)

told you that Richfield was interested in selling only producing and refining equipment and facilities which were on top of the surface of the land? A. They did not.

Q. Prior to the time that a written contract was finally executed between Richfield and yourself on January 17, 1941, had Mr. McGahan or any other official or employee of Richfield Oil Corporation told you that Richfield desired or intended to sell only such equipment as was on the surface of the land? [231]

A. They did not.

Q. When you made a proposal in writing for the purchase of the equipment on the property, did you intend to offer to buy only such equipment as was upon the surface of the land? A. I did not.

Q. When making your offer in writing, was it your belief and intention to offer to buy all producing and refining equipment on the property, whether it be above or below the surface of the land? A. Definitely.

Q. And at the time you executed the contract in writing on January 17, 1941, was that your belief and intention? A. It certainly was.

Q. At both the time that you made your offer in writing and at the time the contract was signed on January 17, 1941, was it your belief and intention that there was to be included in the subject matter of the sale the pipe that was in the oil wells on the property?

A. It was.

Q. Had Mr. McGahan or any other official or employee of Richfield Oil Corporation told you prior to the execution of the written contract on January 17, 1941

(Deposition of Morris Ferer.)

that Richfield did not intend that the subject matter of the sale was to include the pipe in the oil wells on the land? A. They did not. [232]

Q. Did anyone connected with Richfield ever tell you that casing in the oil wells was not to be included in the sale? A. They did not.

Mr. Krasne: I will ask Mr. Paradise if he has in his files the original letter addressed to Richfield Oil Corporation, signed by Aaron Ferer & Sons, dated December 10, 1940, which contains the written offer to buy in this matter.

Mr. Paradise: Do you have a copy of it there?

Mr. Krasne: Yes; I do.

Mr. Paradise: I don't believe I have the original of that letter in my files, Mr. Krasne. As you know, the offices are closed today and I imagine that the original of this letter, if the original was received by Richfield, is in the purchasing department's files, that is, Mr. Kelly's and Mr. Davis' department.

Q. By Mr. Krasne: Mr. Ferer, I show you what purports to be a carbon copy of a letter, dated December 10, 1940, addressed to Richfield Oil Corporation, and indicating that the letter was sent by Aaron Ferer & Sons. Do you recognize that document? A. I do.

Q. Is it a true and correct carbon copy of a letter written by Aaron Ferer & Sons to Richfield Oil Corporation on the date indicated? [233] A. It is.

Q. I read to you the first paragraph of the letter, which is as follows—

(Deposition of Morris Ferer.)

Mr. Paradise: Before you do so, I presume it may be stipulated that, when that file is available and the original is compared with that, any corrections may be made that are necessary.

Mr. Krasne: It is so stipulated.

Q. "We are pleased to submit our bid in the sum of Twenty-two Thousand Dollars (\$22,000.00). to cover all tanks, pipe, valves, fittings, buildings, boilers, and all other materials now situated on your Casmalia refining and producing property, plus pipe line running from the aforesaid property to and including loading rack adjacent to the railroad track, one-half mile west, including boiler and other incidental materials. We exclude the following items:

"Superintendent's house, garage and building now used as a cow barn,

"Main incoming water line, and such line as needed to supply house and cow barn,

"Six large steel storage tanks, approximately 50,000 barrels each,

"Six shell stills, plus one shell still bottom previously sold to the O. C. Fields Company.

"Certain 4 Inch Tubes previously sold to the West Coast Oil Company." I direct your attention to the word "pipe" [234] in the portion of the letter which I have read into the record and ask you whether or not at the time you wrote this letter you intended the word "pipe" to include the pipe in the oil wells on the property as well as all other pipe on the premises. A. I did.

(Deposition of Morris Ferer.)

Q. What was the next thing that happened in this transaction after you sent that letter, that is, the letter dated December 10, 1940, to Richfield Oil Corporation?

A. What was that question again?

Q. What was the next thing that happened in this transaction after you had sent your letter of offer?

A. What was the next thing that happened?

Q. Yes; in this transaction.

A. I think we received a call from Mr. Davis and a letter stating that they accepted our offer.

Mr. Krasne: Mr. Reporter, I will ask you to be good enough to mark the carbon copy of the letter, a portion of which I have read into the record, as Plaintiff's Exhibit No. 2 for identification.

Q. When you had this telephone conversation with Mr. Davis, in which he told you that Richfield Oil Corporation was accepting your offer, was there anything else said?

A. Not that I remember.

Q. And thereafter did you receive a letter from Richfield Oil Corporation confirming their acceptance of [235] your offer?

A. I did.

Q. I show you what purports to be a letter from Richfield Oil Corporation, addressed to Aaron Ferer & Sons, bearing date January 2, 1941, and ask you if that is the letter to which you refer.

A. That is.

Mr. Krasne: The letter just shown to the witness is in the following form and language (reading same). I will ask *ask* you, please, Mr. Reporter, to mark this document I have just read as Plaintiff's Exhibit No. 3 for identification.

(Deposition of Morris Ferer.)

Mr. Paradise: Are you offering those documents, Plaintiff's Exhibits 1, 2 and 3, in evidence. Mr. Krasne, as a part of this deposition?

Mr. Krasne: Yes; I will off them in evidence as Plaintiff's Exhibits 1, 2 and 3, respectively.

[Plaintiff's Exhibits 1, 2 and 3 appearing in the record at this point are heretofore printed at pages 215 to 221 and are therefore omitted here.]

Q. Mr. Ferer, when you received this letter from Richfield Oil Corporation, dated January 2, 1941, did you read it? A. I did.

Q. And you saw the word "pipe" in the first paragraph of it, did you? A. Yes, sir.

Q. Did you understand the word "pipe" to cover pipe in the oil wells as well as all other pipe on the property?

Mr. Paradise: I suggest that is leading and suggestive [236] and I prefer to have the witness' testimony as to this understanding.

Q. By Mr. Krasne: Please answer the question, Mr. Ferer. A. What was the question?

(Question read by notary.)

A. I did.

Q. At the time you received this letter, did you have any knowledge of any intention on the part of Richfield Oil Corporation that Richfield Oil Corporation did not intend that the pipe in the oil wells was to be included in the sale which they were accepting by this letter?

A. I did not.

(Deposition of Morris Ferer.)

Q. Did you suspect that Richfield Oil Corporation did not intend by this document to accept a deal wherein the pipe in the oil wells was not to be sold to you?

A. I did not suspect that they did not intend by this document to accept a deal wherein the pipe in the oil wells was to be sold to me.

Q. At any time prior to the execution of the contract dated January 17, 1941, did you have any knowledge of any such intentions on the part of Richfield Oil Corporation?

A. I did not.

Q. At any time prior to the execution of the contract dated January 17, 1941, did you suspect that Richfield Oil Corporation had any such intentions?

A. I did not.

Q. At any time prior to the execution of the contract dated January 17, 1941, did you have any knowledge or [237] suspicion that Richfield Oil Corporation intended to sell to you only such producing and refinery equipment and facilities as were located upon the surface of the land?

A. I did not.

Q. After receiving the letter from Richfield dated January 2, 1941, did you deliver to Richfield Oil Corporation a cashier's check for \$22,000?

A. I did.

Q. When did you do so?

A. On January 8th or thereabouts.

Q. And did you personally deliver the check?

A. I did.

Q. Where did you deliver it?

A. To Mr. Davis' office.

(Deposition of Morris Ferer.)

Q. On that occasion did you have a conversation with Mr. Davis? A. Yes.

Q. Who was present?

A. Mr. Clements and Mr. Davis and myself and I am not sure whether Mr. McGahan was there or not.

Q. Will you please relate the conversation?

A. It was a conversation that we bought the property and Mr. Davis, I think, called Mr. Paradise and he told us that Mr. Paradise was busy and that in a few days we would draw up a contract and that they were excepting some items, and that is about the generalities of the conversation. [238]

Q. I show you what has already been marked as Plaintiff's Exhibit No. 1, purporting to be a memorandum of sale of material and equipment at Casmalia, and appearing to have the initials "HED" in the lower left-hand corner. When did you see that paper for the first time?

A. Mr. Davis gave it to me the day I brought up the check.

Q. Did he prepare it in your presence, do you remember? A. I don't remember.

Q. Was that before or after Mr. Davis called Mr. Paradise and found he wasn't available?

A. I don't remember.

Q. Did he say anything to you when he handed you this paper?

A. He said this was the terms of our sale and that we would draw up a contract on that basis.

(Deposition of Morris Ferer.)

Mr. Krasne: The instrument which I have shown to the witness, being Plaintiff's Exhibit No. 1, is as follows. The heading is, "Sale of Material and Equipment at Casmalia. To Aaron Ferer and Sons—"

The Notary: I can copy the rest of it in if you wish, as it will be attached to the deposition. It has been offered in evidence and it will have to be attached to the deposition.

Mr. Krasne: Do you have any objection to our substituting copies for these exhibits so that I may have [239] the originals in my file?

Mr. Paradise: No; I have no objection to the substitutions. Do you mean after the depositions have been written up and the exhibits attached, your making copies and substituting them?

Mr. Krasne: Yes.

Mr. Paradise: That is satisfactory. Since this is to be attached to the deposition, there is no need of reading it into the record at this point.

Q. By Mr. Krasne: I direct your attention, Mr. Ferer, to the following language contained in Plaintiff's Exhibit No. 1, "Everything will be sold to the above with the exception of the following", and after that there are six items listed. Did you read this memorandum at the time it was handed to you by Mr. Davis? A. I did.

Q. And did you see in it the provision which I have just read to you? A. I did.

Q. And what did you understand at that time to have been intended by Richfield Oil Corporation when it used the words, "Everything will be sold to the above with the exception of the following"?

(Deposition of Morris Ferer.)

Mr. Paradise: Do you mean what was the witness' understanding of the meaning or what was his understanding of Richfield's intention? [240]

Mr. Krasne: What was his understanding of Richfield's intention.

Mr. Paradise: I think that calls for the conclusion of the witness unless the witness is being asked for specific conversations by Richfield employees, and I will object to the question on that ground.

Mr. Krasne: Ordinarily an objection such as counsel has made might be well taken but, since the defendant has put into issue in this case the question of what the plaintiff suspected the defendant's intentions to be, it becomes material for this witness to testify as to any such suspicions or as to his belief as to the defendant's intentions. Will you go back and read the last question to the witness?

(Question read by notary.)

A. Just what it says, everything, and just what I figured on, all the pipe in the wells and everything on the property excepting the items that they retained or had sold elsewhere.

Q. The defendant in this action, Mr. Ferer, in its counterclaim or cross complaint has alleged, in substance and effect, that there was an oral agreement between yourself and Richfield Oil Corporation, wherein it was agreed by yourself and Richfield that the pipe or casing in the oil wells was not to be included in the sale from Richfield to yourself. Did you ever enter into any such oral [241] agreement with Richfield?

(Deposition of Morris Ferer.)

A. No, sir; there never was any such agreement.

Q. Did you ever have any conversations with any official, employee or representative of Richfield Oil Corporation, wherein anything to that effect was stated by either of you?

A. Prior to the contract?

Q. Yes.

A. No, or for that matter at any other time. No such agreement or conversation was ever had.

Q. It has, likewise, alleged in its counterclaim or cross complaint that there was an oral agreement between yourself and Richfield, wherein it was agreed by the parties that only the producing and refinery equipment and facilities upon the surface of the land were to be embraced in the sale from Richfield to yourself. Was there ever any such oral agreement?

A. There was not.

Q. Was there ever any conversation between yourself and any of the officials, employees or representatives, of the Richfield Oil Corporation in which anything to that effect was said?

A. There was not.

Q. So that the record will be clear, I believe Mr. Paradise asked you whether or not at the meeting in his office which you referred to there was any discussion about [242] supports and other items of equipment having to do with certain stills. And I understand your testimony with respect to that subject matter to be that any such conversation about any such pieces of equipment was for the sole purpose of clarifying the particular items that Richfield had excluded from the conveyance to you?

(Deposition of Morris Ferer.)

A. That is correct.

Q. In other words, at that meeting was there any discussion as to the particular items of equipment or facilities that were being sold to you by Richfield?

A. No; no particular items. It was everything in general. Everything was to go but the items that they had sold or the tanks that they were retaining.

Mr. Krasne: That is all.

Redirect Examination.

Q. By Mr. Paradise: Mr. Ferer, in answer to Mr. Krasne's question, you stated that your conversation with Mr. McGahan occurred before you made a written offer to Richfield Oil Corporation, which I believe you identified as your letter of December 10th, which is Plaintiff's Exhibit No. 2. How long before that letter was written did you have this conversation with Mr. McGahan?

A. I can't tell you that. I don't know. I can't fix the time but it was before that because I tried to gather all of the information I could. [243]

Q. And by referring to this letter, does that refresh your recollection as to whether that conversation with Mr. McGahan occurred before or after your first visit to the Casmalia property with Mr. Clements? A. No.

Q. How did you happen to call Mr. McGahan about this transaction?

A. Well, Mr. Clements spoke to me and I knew Mr. McGahan handled the salvage end of Richfield, and I don't remember whether, as I told you, it was a phone conversation or whether it was at his office. In either event, at the time I saw no harm in either talking to him or calling him to find out what I could about it.

(Deposition of Morris Ferer.)

Q. Did any request or suggestion come from Richfield that you call Mr. McGahan or that you get any information from Mr. McGahan? A. No, sir.

Q. Did Mr. Clements suggest that you call Mr. McGahan? A. No, sir.

Q. Did you know at that time Mr. McGahan's status and authority and capacity with Richfield Oil Corporation?

A. I only knew that he handled some of the salvage and that sometimes he took bids and sometimes sent them up here. I didn't know how much authority he had or anything else except that he was the man to contact on salvage.

Q. I believe you stated in answer to Mr. Krasne's [244] question that Mr. McGahan said that he wanted a bid on everything, using the word "everything"?

A. I stated that I was under the impression that everything was to go with the exception of the items that were sold. It is very hard for me at this late date to try to fix identically what was said. I can only go by what my thoughts were at the time or what brought me to those thoughts.

Q. Did Mr. McGahan state at that time that he had no authority to make any contract or conclude any arrangement and that the same would have to be made with officials of Richfield Oil Corporation?

A. That wasn't even discussed.

Q. Your offer was in the amount of \$22,000, is that correct? A. Yes, sir.

(Deposition of Morris Ferer.)

Q. What portion of that amount did you allocate to the casing in the various wells as distinguished from the other items of facilities and equipment which you were purchasing?

A. As I told you, I lumped that all together. I didn't make any distinction. I lumped everything together.

Q. Then, you can't pick out any portion of that \$22,000 which in your estimate and calculations at that time represented the casing in the oil wells?

A. No. I figured it all as one deal and that everything goes and we might be luckier on one end than another [245] or one thing would offset another, and I lumped the whole thing together.

Q. In your conversation with Mr. Davis, that I think you said occurred on January 8th, did Mr. Davis tell you that it would be necessary to make a written contract on this transaction?

A. That seemed to be his procedure. He didn't say it was necessary. He just merely took it for granted that you were going to write up a contract.

Q. Did Mr. Davis tell you not to commence doing any work on the property until after the written contract had been prepared and executed by both parties?

A. I don't remember. I don't think so. I don't think that was discussed.

Q. You didn't start doing any work on the property until after January 17, 1941, did you? A. No, sir.

Q. Were there any changes in the transaction that were made subsequent to January 8th and the date when the contract was signed?

(Deposition of Morris Ferer.)

A. The only changes that were made were the changes that were discussed where you changed that "all metal and lumber." That is all I know about.

Q. I hand you Plaintiff's Exhibit 1, which I understood you to say was given to you by Mr. Davis on January 8th, is that correct? [246] A. Yes, sir.

Q. Did that memorandum purport to set forth all of the terms of your contract with Richfield Oil Corporation?

A. No. That merely was the nucleus or the basis that the contract would be drawn on.

Q. It was merely a preliminary memorandum for the purpose of discussion, was it not? A. I imagine so.

Q. When the contract was finally prepared and signed, were there additional exclusions from the exclusions stated on that memorandum?

A. Yes; there were some additional exclusions made that came up in the discussion.

Q. One of the additional matters that was excluded was the gas lines running from the wells to the superintendent's house, is that correct? A. Yes, sir.

Q. That had not been discussed at the time this memorandum was prepared, had it?

A. No, sir; I don't think so. It might have been discussed that day or discussed up here in the office. I don't know.

Q. Do you mean discussed subsequently?

A. No; at that time.

(Deposition of Morris Ferer.)

Q. You say it might either have been discussed at that time in Mr. Davis' office or subsequent to that? Did I [247] correctly understand you?

A. No; I think it was discussed up here in the office at the time we made the change in the contract.

Q. That was after the date on which this memorandum was prepared? A. Yes, sir.

Q. At your meeting in my office, which occurred subsequent to January 8th, when this memorandum was prepared, were other terms of the contract discussed, other provisions that are not included in this memorandum?

A. Yes; small details. Little differences or different things were discussed but nothing of major importance. That memorandum covered the basis of our deal.

Q. There was nothing stated in the memorandum, was there, about such matters as compliance with certain laws and the regulations of the fire warden and the Fish and Game Commission and the matter of the term of the contract and the matter of how Aaron Ferer & Sons work was to be performed and the matter of insurance coverage and indemnification or mechanic's liens or unemployment insurance, taxes or other property taxes, including sales taxes, or the rental of the property?

A. That is correct.

Q. Those matters were all discussed and agreed upon subsequent to the date of this memorandum, is that correct?

A. They were not discussed but they were put in your [248] contract. You drew it up. They were in the contract you drew up.

(Deposition of Morris Ferer.)

Q. You don't recall any conversations on any of those points?

A. Well, you might have asked me if we had insurance and I told you yes or something like that. I mean it was taken for granted it would be in the contract.

Q. Had they been discussed either on January 8th, at the time of this memorandum Plaintiff's Exhibit 1 had been prepared, or at any time before then?

A. No; except that this was merely a basis, as I said, or the nucleus for the outstanding terms of the contract, that is all.

Q. What does the phrase "pipe line" mean to you?

Mr. Krasne: I object to that on the ground it has been asked and answered.

Q. By Mr. Paradise: Will you answer the question?

A. Pipe line to me means all pipe that is on the property and pipe in the wells.

Q. You are talking now about the phrase "pipe line", are you? A. Well, pipe line and pipe.

Q. You say pipe line means something other than pipe line?

A. Pipe line to me would mean a string of pipe, whether it was vertical or horizontal or any other way. [249]

Q. Is that the meaning you are putting upon it now or is that the impression that you have always had of the meaning of the phrase "pipe line"?

A. I am putting it on there now and I have always had that.

Q. You have lengths of pipes at your warehouse, do you not? A. Yes, sir.

(Deposition of Morris Ferer.)

Q. Do you refer to those as pipe lines?

A. No; they are not in a line. They are stacks of pipe.

Q. A pipe line means a length of pipe that runs in the ground and has been installed in the ground, does it not?

A. Not necessarily. I would say a pipe line would mean a line of pipe in any direction, vertical or horizontal or any other way. It is a line of pipe.

Q. Calling your attention to Plaintiff's Exhibits 2 and 3, dated December 10, 1940 and January 2, 1941, respectively, Mr. Krasne called your attention to the use of the word "pipe" in those exhibits. Do you recall that?

A. Yes, sir.

Q. Do you find in the contract that was signed, dated January 17, 1941, any reference whatsoever to pipe other than the reference to the phrase "pipe line", and I call your attention particularly to the provisions of paragraph 1, which state what equipment and facilities are to be sold [250] under the contract?

Mr. Krasne: That is assuming facts not in evidence. The contract says everything is being sold. Counsel is referring to something that is a gratuitous generalization.

A. Shall I answer that question?

Q. By Mr. Paradise: I call your attention to the phrase in the contract, the sentence reading as follows: "Said equipment and facilities so to be sold include generally all pipe lines, valves and fittings, buildings, boilers, pumps, engines, motors, tanks, metal and lumber, now located on said land, all subject to the exceptions hereinafter provided." Is there any reference to pipe there as distinguished from pipe lines?

(Deposition of Morris Ferer.)

A. There is no reference there to pipe but pipe and pipe lines to me are the same thing. There is a reference there to pipe lines.

Mr. Krasne: Do I understand counsel's point to be that none of the pipe on the property was included in this conveyance, none of the pipe?

Mr. Paradise: I am directing my questions to the casing that is installed in the wells, Mr. Krasne.

A. I notice in this contract Exhibit A that you use the word "pipe" here, beginning at "property known as Point M", and so forth.

Q. Are you referring to the property description which sets forth a monument from which metes and bounds directions [251] are computed?

A. I suppose so. I don't know. I just noticed the word "pipe" there, is all.

Q. That would not be a pipe line, would it?

A. No; I don't think so.

Q. Mr. Ferer, in examining this contract dated January 17, 1941, did it occur to you that there was a difference in the language of the equipment and facilities to be sold under this contract, where the word "pipe line" is used, which differs from the word "pipe" in your letter of January 2, 1941?

A. It did not because, as I stated before, we figured we were buying everything.

Q. The list of items specified in your letter of January 2nd, which is Plaintiff's Exhibit No. 3, states, "tanks, pipe, valves, fittings, buildings, boilers, tank car loading facilities", and then it goes on. That language is practi-

(Deposition of Morris Ferer.)

cally identical, is it not, with the language in this contract with the exception that there has been added to the language of this contract the words "metal and lumber" and also that the word "pipe" has been changed to "pipe lines"? Will you compare the two?

A. Yes; that is correct.

Q. When you saw that change, did you make any inquiry or raise any question as to what was intended by the change?

A. Not on that particular change but that is one of [252] the reasons I had you change it to read "all metal and lumber".

Q. Did you mention the change between "pipe" and "pipe lines" when you were asking for the insertion of the words "metal and lumber"? A. I did not.

Q. So, if you had a question in your mind at that time as to the reason for the change from the word "pipe" to the phrase "pipe lines", you never inquired about it?

A. I didn't have any particular question in mind because I had only in mind that we bought everything on that property with the exception of the items that you were retaining.

Q. I don't think you are answering my question.

A. Well, I answered it. I said that I didn't have any change in mind.

Q. You saw that the change had been made, however?

A. No; I can't say that I even noticed any change. I didn't have my papers up here and I didn't make any comparison.

(Deposition of Morris Ferer.)

Q. You read that provision of the contract so carefully that you wanted the addition of the phrase "metal and lumber", did you not?

A. I read that particular phrase, not having in mind the question of pipe or pipe line. I had in mind that we bought everything on that property. [253]

Q. When you asked for the inclusion of the words "metal and lumber", was it not true that you were discussing at that time the supports and overhead lines and the other loose metal that was located not only on the refining end of the property but also on the producing end of the property?

A. I answered that question by stating that I had that in mind, to cover everything on the property.

Mr. Paradise: That is all.

Recross-Examination.

Q. By Mr. Krasne: When you signed the contract on January 17, 1941, did you observe the following clause, "Seller covenants and agrees to sell to buyer, subject to the exceptions hereinafter provided, all of the equipment and facilities now located on said land" and so forth?

A. I did.

Q. What was your understanding of the meaning of that clause?

A. Just what it says; that everything, including the pipe in the wells, all the equipment and all the facilities and all the pipe and all the pipe lines and everything else, went on there with the exception of the items that they excepted.

Mr. Krasne: That is all. [254]

(Deposition of Morris Ferer.)

Redirect Examination.

Q. By Mr. Paradise: When you considered that sentence from the contract to which Mr. Krasne just directed your attention, what interpretation did you give to the phrase "now located on said land"?

A. It would be the interpretation that everything on there, on the property, pertaining to metal and lumber and all the facilities, belonged to me.

Q. Does the phrase "all of the equipment and facilities now located on said land" mean the same to you as the phrase, if it had been used, "all the equipment and facilities now located on and under the land"?

A. I wouldn't know how to answer that question. I have told you my interpretation and I sincerely thought and still believe that I was buying everything on that property, the wells and everything else, because there was so much of the material that was hidden.

Q. Inasmuch as more than half of the material was under the land as you have testified, the material that you had in mind, did it occur to you that the phrase "on said land" might not include that?

A. I am sorry but I haven't got a legal mind. It didn't occur to me.

Q. Did you inquire about it at that time?

A. No, sir.

Mr. Paradise: That is all.

MORRIS FERER. [255]

Subscribed and sworn to before me this 12th day of February, 1942.

ROSS REYNOLDS,

Notary Public in and for the County of Los Angeles, State of California.

(Seal) [256]

STATE OF CALIFORNIA,
COUNTY OF LOS ANGELES—ss.

I, Ross Reynolds, a Notary Public in and for Los Angeles County, State of California, do hereby certify that the witnesses in the foregoing depositions named were by me first duly sworn to testify the truth, the whole truth and nothing but the truth in said cause; that said depositions were taken, commencing at the hour of 10 o'clock a. m. on Friday, February 6, 1942, in Room 1221 Richfield Building, 555 South Flower Street, Los Angeles, California, in the City of Los Angeles, County of Los Angeles, State of California, and on Saturday, February 7, 1942, commencing at the hour of 10:30 o'clock a. m., at the same place, and were completed on said last mentioned date; that said depositions were taken down in shorthand writing by me and were thereafter, under my supervision, transcribed into typewriting, and that they are a true record of the testimony of the said witnesses; that the said depositions were submitted to the said deponents for reading, and, after reading the same, they directed that I make the following changes and gave the following reasons therefor:

Page 38, line 9, change "steel" to "still". The witness Clements stated that the word "steel" is an error in transcription.

Page 52, line 25, after the word "Yes", add "as far as this map shows but there are other wells on the south [257] part of the property." The witness Clements stated that he made the change to avoid misconstruction; that

he thought counsel was talking about what the map he was pointing to showed but the answer might have indicated that there actually were no other wells there.

Page 112, line 16, after the word "Casmalia", add "before the contract was signed." The witness Clements stated that he thought counsel mean that.

Page 132, line, 2, strike out the words "there was" and insert "that", and strike out the word "to" and insert the word "could". The witness Clements stated that he believed the reporter misunderstood his answer.

Page 219, line 13, strike out the word "lines" and insert the word "items". The witness Ferer stated that he meant "items".

Page 237, line 16, after the word "not", add "suspect that they did not intend by this document to accept a deal wherein the pipe in the oil wells was to be sold to me." The witness Ferer stated that he thought that was what the question meant.

Page 243, line 21, strike out "2nd" and insert "10th". The witness Ferer stated that he believed "2nd" was an error by the reporter.

I further certify that thereupon, after the said corrections above mentioned were made by me, the said depositions were subscribed in my presence. [258]

I further certify that during the taking of said depositions counsel for the plaintiff had marked for identification and offered in evidence three documents, which have been identified by me as Plaintiff's Exhibit No. 1, Plaintiff's Exhibit No. 2 and Plaintiff's Exhibit No. 3,

respectively; that, pursuant to stipulation between counsel for the respective parties, copies of said exhibits are hereto annexed and the originals have been returned to counsel for the plaintiff.

I further certify that I am not of counsel or attorney for either of the parties in said depositions and caption named, or in any way interested in the event of the cause named in the said caption; and that I am not related to either of the parties thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office this 13th day of February, 1942. (Seal)

ROSS REYNOLDS

Notary Public in and for the County of Los Angeles,
State of California. [259]

[Endorsed]: Filed Feb. 14, 1942.

[Endorsed]: No. 10743. United States Circuit Court of Appeals for the Ninth Circuit. Aaron Ferer & Sons, a co-partnership, Appellant, vs. Richfield Oil Corporation, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 17, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeal for the
Ninth Circuit

No. 10743

AARON FERER & SONS, a co-partnership,
Appellant,
vs.

RICHFIELD OIL CORPORATION, a corporation,
Appellee.

STATEMENT OF POINTS ON APPEAL AND
ASSIGNMENT OF ERRORS.

Plaintiff and appellant sets forth his statements of points on appeal and his assignment of errors as follows:

I.

The court erred in ordering the dismissal of the first cause of action for declaratory relief set forth in plaintiff's amended complaint.

II.

The court erred in denying plaintiff's motion for summary judgment, because the defendant's affidavits and depositions taken in resistance thereof failed to show or tend to show any oral agreement as alleged in defendant's counter claim or cross complaint.

III.

That the court erred in granting the defendant's motion for summary judgment, because defendant failed and refused to file the affidavit of any person stating that plaintiff and defendant had ever entered into an oral agreement different than the written agreement between the parties.

IV.

The court erred in having considered or given any

weight to said depositions in deciding plaintiff's motion for summary judgment.

V.

That each and every finding of fact except findings of fact Nos. 1, 2, 6 and the last sentence of 7, are unsupported by the evidence and the evidence is insufficient to sustain any of said findings.

VI.

The following findings of fact, among others, as made by the court are each and every one contrary to the evidence in said case and there is no substantial evidence to support any of said specified findings or any part thereof: Finding Nos. 3, 4, 5, 7, except that portion reading as follows: "Said R. D. Montgomery was never in direct communication with plaintiff, or any representative of plaintiff at the time said contract was executed, or during any of the antecedent negotiations; and Findings Nos. 24, 25, 26, 27, 28, 29 and 31.

VII.

The court erred in making its finding No. 30, because it had previously found and concluded in a written opinion and decision dated December 29, 1941, defendant had sold the pipe in the oil wells in controversy, under the written contract, dated January 17, 1941, and that said contract was clear and unambiguous.

VIII.

That the findings are contrary to the evidence and are unsupported by the evidence.

IX.

That the findings are insufficient to support the conclusions of law or the judgment because nowhere in said findings is it found that the parties ever entered into an

oral agreement, containing the provisions set forth in Paragraph 2 and Paragraph 6 of the court's conclusions of law and in Paragraph II of the court's judgment.

X.

That the conclusions of law do not sustain the judgment because nowhere in said conclusions of law does the court as a matter of law conclude that plaintiff and defendant entered into an oral agreement containing the provisions set forth in Paragraph II of the Judgment.

XI.

That the findings are insufficient to support conclusions of law or the Judgment.

XII.

That the court erred to the substantial prejudice of plaintiff's rights in refusing to permit plaintiff to be relieved of the stipulation previously entered into by the terms of which stipulation depositions were taken and affidavits filed by defendant in connection with defendant's resistance of plaintiff's motion for summary judgment were to be considered at the trial as evidence.

CARL B. STURZENACKER and
PHILIP N. KRASNE

By CARL B. STURZENACKER

CARL B. STURZENACKER—
Attorneys for Plaintiff.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Apr. 21, 1944. Paul P. O'Brien,
Clerk.